89- 1673

No.

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1989

JAMES C. POPE,

Petitioner-Appellant,

vs.

LANGHORNE BOND
ROLAND A. ECKERT
DONALD B. ROCK
LIONEL L. DRISCOLL
J. LYNN HELMS
JONATHAN HOWE
MICHAEL J. FORRESTER
CHARLES E. WEITHONER
CLARK ONSTAD
CHRISTIAN B. WALK, JR.

Respondents-Appellees.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

April 28, 1990

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QUESTIONS PRESENTED

(1) Whether the Appellate Court for the D.C. Circuit has erred in it's decision to deny plaintiff his guaranteed Constitutional rights under the First and Fifth Amendments, thus pre-empting a Bivens-type suit, when it is demonstrated that no other form of redress or even any hearing has been available to address the major personnel actions and resulting permanent injuries which he has suffered at the hands of defendants, despite the existence of the Civil Service Reform Act (CSRA) of 1978.

(2) Whether the Appellate Court's refusal to grant plaintiff's request for a full briefing and oral argument has denied plaintiff the opportunity to appeal the District Court's decision to dismiss four of the original defendants on the basis of the 3-year statute of limitations.

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OPINIONS BELOW

The opinion of the Court of Appeals for the D.C. Circuit (App. A) granted the defendants' (Bond et al.) motion for summary affirmance with the statement that appellant's (Pope) claims fall within the scope of grievances redressable by the Civil Service Reform Act (CSRA) of 1978, further citing Spagnola v. Mathis, 859 F.2d 223 (D.C. Cir. 1988) and Schweiker v. Chilicky, 109 S. Ct. 2460 (1988).

STATEMENT OF JURISDICTION

The judgement of the Appeals Court for the D.C. Circuit was filed on December 29, 1989. Petitioner Pope did not apply for a rehearing. Pope invokes the jurisdiction of this Court under 28 U.S.C. Section 1254 (1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED.

Art. III, Section 2, cl. 1, U.S. Constitution

Amendment I, U.S. Constitution

Amendment V, U.S. Constitution

42 U.S.C. 1985(3) (1982)

18 U.S.C. 1505

FAA Reg. 3750.4, #36

FAA Reg. 3510.8(a) Para 8, App. 2

PREFACE

This request for a Writ of Certiorari involves far more than just the petitioner, Pope, whose Constitutional rights under the First and Fifth Amendments were violated and whose career was destroyed by the premeditated and illegal actions of defendants --all top officials of the FAA--who have lied under oath to the U.S. Congress and deceived the American public regarding the availability of an industry-developed Airborne Collision Avoid-

ance System (ACAS) which the agency itself had tested in a 4-year, $12 million evaluation program ending in 1975 with the conclusion that the ACAS was reliable, available, and affordable, and, once approved, it could be in system-wide operation with 2 or 3 years. (App. B)

In actuality therefore, this request for a Writ of Certiorari also speaks in absentia from the graves of the more than 900 people--aircraft crews and members of the flying public--who have lost their lives as a direct result of defendants' refusal to approve the available, proven, and low cost ACAS all during these past 15 years since 1975. The reason for this cover-up was as simple as it was inexcusable: Acas approval would have sounded the death knell for the agency's grandiose plans to conceive, develop, and implement a 20-year-into-the-future multi-billion dollar ground-based radar sys-

tem which, after 15 years of development, is still not available, and likely never will be.

What this means, of course, is that for the foreseeable future, defendants adamant refusal to approve the life saving ACAS will inevitably result in the untimely deaths of those hundreds of people who will be killed in otherwise preventable future mid-air collisions.

STATEMENT OF THE CASE

At all times relevant to the personnel actions which were taken by Bond et al. against Pope, both defendants and plaintiff were employed by the Federal Aviation Administration (FAA). Bond wa- FAA administrator through 1980, being replaced by Helms who served from 1981 through 1983.

Pope was employed by the FAA beginning in 1966 and served in rapidly increasing levels of responsibilities until

defendants terminated his federal career in December of 1981. Pope is a graduate engineer with more than 30 years of experience in the field of aviation safety. He is an Airline Transport Pilot with more than 5000 flight hours, has served as Chief of Aviation Safety (Chief Pilot) for the Nebraska Department of Aeronautics from 1959 through 1964, leaving there to form his own company which manufactured and marketed aircraft safety controls of his own design.

In 1966, Pope began federal service with the FAA's HQ engineering division and within 4 years had worked his way up the hierarchy to become the first director of the agency's nationwide airport certification program. In June of 1971, he was requested by the deputy administrator to accept the position of FAA Industry and Government Liaison, and 3 years later he was appointed to the posi-

tion of Assistant Administrator for the Office of General Aviation, where he served as one of the 5 top level policy advisors to the administrator.

It was while with the Office of General Aviation that in carrying out his responsibilities to review and recommend policy on matters of research/development that Pope discovered through official agency reports and meetings that plans were being made which would serve to squander hundreds of millions of dollars in a grossly misguided effort to invent, develop, and implement an all-new multi-billion dollar radar ground system, when, in fact, the agency had just (then--1975) completed a 4-year, $12 million evaluation of three industry-developed Airborne Collision Avoidance Systems (ACAS) with the official conclusion that "..3 ACAS have been tested and one of them meets all the objectives of the agency."(App.B)

It immediately became obvious to Pope, as well as to those involved in the ACAS test program, that after 30 years of research, mid-air collisions would almost overnight become a thing of the past. At that moment then, all that was needed was the signature of the administrator certifying that the leading-edge technology ACAS--at a cost of only $1000 per aircraft was finally test-proven and ready for immediate protection of all aircraft in the U.S. civil air fleet. Instead of approving the ACAS however, the Administrator signed an official letter to the Chairman of the Senate Aviation Subcommittee (Senator Howard Cannon) misleading him into believing that the ACAS had failed to meet agency objectives, and stating that the agency would continue development of their long-range radar ground system program begun back in 1970, but not scheduled for completion until 1995. (App. C) In January of 1976,

Honeywell, the company that designed ACAS, (not yet aware that the FAA Administrator intended to lie to the Congress regarding the merits of ACAS), issued technical specifications which confirmed that ACAS had a 'zero' false alarm rate and was 'compatible with the air traffic control system'. (App.D) It was at that time (January of 1976) that Pope began working within the agency to convince the administrator and his other advisors that ACAS was by far the best alternative for preventing mid-air collisions, from both safety and economic viewpoints. Pope's efforts were simply ignored. To his further shock and amazement, he discovered several technical reports which had been ordered in an attempt to validate FAA's proposed radar system, but which instead proved conclusively that ACAS was by far superior. These reports were never made public, and Bond et al. even went so far

as to deny under oath to the Congress that they had ever existed.

Recognizing the jeopardy that Pope's knowledge of the ACAS cover-up and his possession of those official technical reports could have not only on the agency's image, but much more seriously, the careers and reputations of the administrator and his other top officials, Pope became the victim of rapidly-building and varied harassment tactics.

In August of 1978, Pope's Office of General Aviation was abolished. Little more than a month later--on September 25, 1978--a PSA Boeing 727 collided in mid-air with a small Cessna aircraft over the skies of San Diego killing 144 people in the two planes and on the ground. Later that same year, Bond personally testified under oath before Congress stating, "..no safe or reliable collision avoidance system exists today...", despite the fact

that at least seven official FAA reports showed that ACAS was trouble-free and effective, whereas FAA's system was just the opposite.

Immediately after the San Diego mid-air, and during the following few weeks, Bond personally initiated personnel action unfavorable to three high level FAA officials--two Associate Administrators, and, Pope--each of whom had played major roles in the ACAS issue. Within 3 days following the San Diego mid-air, the Associate Administrator for Engineering and Development was suddenly placed on the retirement list. A month later, the Associate Administrator for Policy, the first woman to hold that high level position, was tricked by the Administrator into resigning. Pope's fate was postponed until January of 1979, and just 5 days after the CSRA of 1978 became effective, he was advised that he was

being unilaterally transferred across the country to the FAA's regional office in Seattle. Once there, his supervisor, Chief of the Engineering branch, candidly advised Pope that his new position was a phony and that it had been concocted simply to "get Pope out of FAA HQ.", an action that is a blatant violation of both OPM and FAA regulations.

After trying for more than a year to gain reassignment back to FAA HQ and a return to his home and family in Virginia, Pope finally went public with revelations of agency fraud, mismanagement, and threats to public safety in the matter of the ACAS cover-up. As a result of nationwide publicity including an appearance with Mike Wallace on the CBS "60 Minutes" newshour, Pope was subpoenaed to testify before the U.S. Congress Science and Technology Subcommittee on Transportation, Aviation, and Materials. (App.E)

Furious that Pope would reveal agency secrets, the new FAA Administrator, co-defendant J. Lynn Helms, took prompt retaliatory action by ordering his subordinates--now co-defendants--to take whatever personnel action was necessary to terminate Pope's federal career. Pope immediately became the focus of an incredible barrage of psychologically devastating personnel actions leveled at him by his new supervisor--co-defendant Forrester--who was acting under Administrator Helms orders to fire him (Pope). After building a spotless reputation of service to the aviation community and a rapid rise to near the top of the FAA hierarchy along with frequent pay increases and awards, Pope's 15 year career with the agency was suddenly and incongruously blackened with adverse actions, rebukes, reprimands, and finally formal charges including unacceptable job

performance, failure to carry out orders, insubordination, improper use of duty time, and unauthorized absence (AWOL). After 15 years of commendable service with the FAA, Pope had--within months--become an anathema.

Finally, in August of 1981, the psychological and emotional strain on Pope reached the breaking point and he was told by his physicians in Seattle to take sick leave and return to his wife and home in Virginia. Defendants' harassment continued unabated however until finally Pope was hospitalized during the months of September and October. With a viciousness and insensitiveness seldom witnessed, while in the hospital Pope received formal notice that his career with the FAA was to be terminated on the basis of the charges listed above, excluding the AWOL charge which was originally made against Pope for his being in

the hospital. Increasingly during this extended vendetta, several members of Congress had become aware of the vendetta against Pope and stinging letters of protest and rebuke were sent to defendant Helms and to the Secretary of Transportation, but to no avail.

Despite the efforts of these several members of Congress to persuade defendants to cease their relentless attack on Pope, the agency succeeded in terminating his federal career on December 16, 1981. This action was, of course, a direct violation of 18 U.S.C. 1505 prohibiting retaliation against a witness who has testified before the U.S. Congress. At a time in his life (he was then 57) when he should have been enjoying maximum job satisfaction and salary level, for the first time in his life Pope found himself unemployed, out of the FAA, and blackballed by defendants thus preventing him

from getting any job in the aviation industry. Deprived of his income, Pope applied for workers' compensation benefits which were promptly granted by the Department of Labor which quickly recognized that his injuries had been caused by the agency's actions and were thus job-related.

Pope's attorney immediately filed a petition with the Merit Systems Protection Board to contest the firing, but after 8 months of legal maneuvering, and just 2 days before the hearing was to take place, defendants unilaterally rescinded Pope's firing in a last minute--and successful--effort to prevent public exposure of their mishandling of the ACAS affair as well as their nefarious retaliatory treatment of Pope.

It is crucial to point out that then--and as it continues to date--defendants have employed every available

means--legal and otherwise--to avoid any and all hearings such as a jury trial wherein they would be placed under oath and questioned not only about their illegal treatment of Pope, but their irresponsible conduct of preventing the use of the ACAS, an action that--if exposed--would place them in both moral and legal jeopardy for the deaths of those hundreds of air travelers who have died in otherwise preventable mid-air collisions since 1975.

Minutes of a high-level FAA meeting back on February 16, 1976 reveal that defendants were well aware that their decision to reject ACAS would result in the future deaths of unknown numbers of people: "It was explained that (the agency's system) is still in development and an 'off-the-shelf' ACAS is available to provide protection between air-carrier aircraft at a low cost."

Mr. Flener (FAA's director of air traffic control): "recognizes the pressure that may be brought to bear by a mid-air collision...but is willing to accept it."

It has now been 15 years since defendants rejected ACAS, and their system is still undergoing test and development with the cost having risen to an astronomical $250,000 per aircraft whereas in comparison, the ACAS was priced at $1000 for small aircraft and about $7000 for airliners. Moreover, if FAA's version is ever implemented, it is designed to protect only 1 percent of the nation's air fleet. Far more insidiously however--from both fiscal and technological viewpoints--FAA's system requires an all-new, multi-billion dollar ground network, but even at that, the MITRE technical reports confirm that FAA's version is dangerous:

"It is possible for (FAA's system)

to provide the wrong command", and "self-interference may limit effectiveness in high density areas."..(where protection is most needed) (FAA/MITRE report dated September 30, 1975). Even if the FAA succeeds in getting their dangerous ground-based system to work, it will, at best, protect only one percent of the nation's civil air fleet, uses WW II technology, and will cost 35 times more more than the leading-edge technology ACAS. But most tragic of all, FAA's implementation of their problem-plagued system will--literally--signal a sentence of death for those who will inevitably be killed in future mid-airs involving the other 99% of the civil air fleet that cannot afford--nor even have the option to buy--any type of collision avoidance equipment.

This still on-going struggle to protect the flying public is the cause

that brings Pope to the U.S. Supreme Court in quest of a Writ of Certiorari.

CHRONOLOGY OF THE CASE TO DATE

Prior to the initial filing of this suit in District Court, Pope's attorneys compiled a comprehensively documented account of his aviation career, his contributions to the field of aviation safety--with industry and with government--his relationship with his supervisors and colleagues, and the events leading up to his career termination with the FAA. This document, titled "A Presentation to (the) Department of Transportation, Office of General Counsel", further identified as "MEMORANDUM IN SUPPORT OF JAMES C. POPE'S REQUEST FOR RETURN TO ACTIVE STATUS IN THE DEPARTMENT OF TRANSPORTATION" provides a most comprehensive review of the contrived and extraordinary personnel machinations to which defendants went in their finally

successful efforts to remove Pope from the FAA. (App. F)

Failing in the attempt to gain reinstatement with the FAA, Pope filed suit against the first group of defendants on September 19, 1984 with the following actions and orders (App.G):

9/19/84 COMPLAINT FOR DAMAGES (CONSTITUTIONAL TORT) AND INJUNCTIVE RELIEF (Named in this initial complaint were defendants Bond, Helms, Eckert, Walk, Howe, and Forrester"

12/12/84 FIRST AMENDED COMPLAINT FOR DAMAGES (CONSTITUTIONAL TORT) AND INJUNCTIVE RELIEF

6/13/85 SECOND AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF.

(On the basis of information acquired by court-ordered discovery, this action expanded the list of defendants to include Weithoner, Driscoll, Rock, and Onstad)

Because of unrelated legal problems,

Helms was deleted from this complaint, but was subsequently reinstated as a defendant.

8/5/86 ORDER/DISTRICT COURT OF D.C. dismissing Bond, Eckert, Walk, and Onstad on the basis of the 3-year state of limitations, but denying remaining defendants dismissal on qualified immunity grounds.

8/29/86 ORDER/DISTRICT COURT OF D.C. ruling on motions from both litigants.

6/2/87 ORDER/U.S. COURT OF APPEALS (DC) denying plaintiff's staying motion.

12/15/87 ORDER/U.S. COURT OF APPEALS (DC) denying pre-trial dismissal of remaining defendants on qualified immunity grounds.

10/27/88 ORDER/DISTRICT COURT OF D.C. dismissing remaining defendants Driscoll, Forrester, Helms, Howe, Rock, and Weithoner following the U.S. Court of Appeals for the D.C. Circuit's 9/30/88 (en banc) ~~decision~~ Spagnola v. Mathis case.

12/29/89 ORDER/U.S. COURT OF APPEALS FOR

THE D.C. CIRCUIT granting defendants motion for summary affirmance on the basis that Pope's claims fall within the scope of grievances redressable by the CSRA of 1978.

3/21/1990 ORDER/SUPREME COURT OF THE U.S.

Order signed by Chief Justice William H. Rehnquist granting an extension of Pope's date for filing a writ of certiorari to and including 4/28/90.

REASONS FOR GRANTING THE PETITION

POPE V. BOND ET AL. is concise in it's brevity. The Appeals Court has cited only two relevant table of authority cases, and the comprehensive documentation developed by Pope which was compiled during the 5-year-long protracted series of legal maneuvers by defendants lays bare the key elements of this case.

The major thrust of POPE v. BOND

is that despite the oft-stated "..comprehensive procedures and substantial provisions giving meaningful remedies..." attributed to the CSRA, a devious and clever 11th hour legal ploy was unilaterally initiated by defendants to forestall and prevent the August 1982 Merit Systems Protection Board (MSPB) hearing which had been scheduled to review defendants termination of Pope's FAA career.

This shrewd legal maneuver by defendants unilaterally prevented a public airing of their ACAS cover-up, but more than that, although ostensibly opening the way for return of Pope to active FAA service, a simultaneous personnel action kept Pope from returning by defendants' simple act of placing him on "Retirement due to a Disability".

In response to an attempt by defendants to gain dismissal on the basis of qualified immunity, in the order dated

August 5, 1986, Judge Flannery of the District Court of the D.C. stated: "..there is no doubt that--as alleged--plaintiff's speech addresses a matter of considerable public concern (flight safety). In this case, there appears to be no compelling government interest in preventing such speech other than to suppress lawful criticism. Plaintiff (Pope) was a designated FAA ombudsman; if his outspoken views are considered 'undermining the FAA', then so must any critical view made public. Indeed, speech which most embarrasses an agency will often be the most important speech. There are no extraordinary circumstances in this case so that defendants could not reasonably have known of the existence of these First and Fifth Amendment rights. Therefore the remaining defendants are not entitled to qualified immunity at this time."

Although the Appeals Court upheld this decision, the District Court's August 5, 1986 order denying qualified immunity, at the same time dismissed defendants Bond, Eckert, Walk, and Onstad on the basis of the 3-year state of limitation. This decision along with the October 27, 1988 order dismissing remaining defendants Driscoll, Forrester, Helms, Howe, Rock, and Weithoner resulted in Pope's appeal action which was subsequently denied by the U.S. Court of Appeals with their December 29, 1989 granting defendants' request for summary affirmance.

Accordingly, this request for a writ of certiorari encompasses all ten defendants effectively dismissed by the Appeals Court action of December 29, 1989, inluding the original defendants dismissed by the District Court on August 5, 1986.

It is relevant to clarify that during the 4-year protracted history of this case, defendants have 3 times attempted to have the case dismissed on the basis of Bush v. Lucas 462 U.S.367 (1983), but each time the District Court denied such motions. The defendants declined to appeal those decisions, thus rendering moot any further contention that Bush is a barrier to a Bivens remedy for Pope.

Since the Court of Appeal's decision on September 30, 1988 in Spagnola v. Mathis 859 F.2d 223 (1988), which served to limit Spagnola's redress to the unreviewable whims of the Office of Special Counsel (OSC), the U.S. Congress has formally recognized the ineffectiveness, shortcomings, failures, and particularly the incredible damage which has been perpetrated by the OSC during the decade since the passage of the CSRA; damage that has not been exclusively limited to

the hundreds of civil servants that have been denied justice, but also to the American public at large who have paid the more painful price for the OSC's failure to carry out it's originally intended mission. In the instance of Pope v. Bond et al., the OSC's dismal failure has been one of the key factors leading to the deaths of hundreds of air travelers in mid-airs since Pope first went to the OSC back in 1981.

After several abortive attempts to pass legislation that would force the OSC to discontinue it's nefarious behavior, the U.S. Congress passed--unanimously--the Whistleblower Protection Act of 1989 which was immediately signed into law by President Bush. At long last, the OSC was firmly directed to protect those civil servants who risked their careers for the public welfare. Though this legislation is not retroactive and will not pro-

tect Pope, the wording of the Bill and the history of this legislation--and that of previous similar attempts--leave no question as to the intentions of Congress on the matter of protection and redress for legitimate federal whistleblowers--such as Pope--who reveal documented instances of fraud, waste, abuse, and threats to the welfare of the American public.

Therefore, the speculation throughout the past few years by the Courts as to what was, and what was not, intended by the U.S. Congress can now be reviewed and clarified in light of this recently defined environment of protection for civil servants, and it is with this enlightened guidance that a vigorous argument is made in this case of Pope's request for a writ of certiorari with a meaningful review of relevant cases.

REASON #1 TO GRANT THE PETITION FOR WRIT OF CERTIORARI DEMONSTRATED FAILURE OF THE CSRA OF 1978

The Courts have erred in their interpretation of the CSRA with their opinions that federal employee protections provided by the Act are a substitute for those provided by the Constitution rather than serving as additional protection as intended by Congress. Even in Bush v. Lucas, 462 U.S. 373 (1983), although litigation was initiated prior to enactment of the CSRA, this Court agreed that:

"Thus, we assume , a federal right has been violated and Congress has provided a less than complete remedy for the wrong." None-the-less, this Court held on p.367: "Because petitioner's claims arise out of an employment relationship that is governed by comprehensive procedural and substantive provisions giving meaningful

remedies against the United States, we conclude that it would be inappropriate for the Court to supplement that regulatory scheme with a new (nonstatuatory damages) judicial remedy.", and, "In the absence of such a congressional directive (that the courts refrain from exercising its prerogatives to award damages) the federal courts must make the kind of remedial determination that is appropriate for a common law tribunal, paying particular heed however to any special factors counseling hesitation before authorizing a new kind of federal litigation." (p. 378)

It is suggested to this Court that although at the time of the Bush decision in 1983, certain 'special factors' may have existed, in the years since passage of the CSRA, this generic list of 'special factors' has undergone a crucial metamorphosis. Interestingly, no

court has, as yet, articulated the full panoply of these 'special factors'. Reading this Court's holding on Bush, strongly suggests that "...Congress' comprehensive scheme protecting civil servants..." is at least one such 'special factor'. This Court also acknowledged: (Id p. 378)

"The federal courts' statutory jurisdiction to decide questions confers adequate power to award damages (emphasis added) to the victim of a constitutional violation." (even if Congress has not expressly authorized such a remedy.)

"When Congress provides an alternative remedy, it may indicate its intention that the Court's power should not be exercised."

However, This Court goes on to admit in Bush that Congress did not exercise such a legislative directive. Therefore, it is suggested that, armed with this

authority, this Court would seek to err on the side of justice for federal employees by exercising it's right "...to grant relief not expressly authorized by congress..." as provide by 28 U.S.C. 1331 (1976).

If the Congress, in it's wisdom, recognizes that federal employees--more than just an average citizen--are responsible for writing and enforcing rules which serve to protect the monies, properties, and lives of all citizens, then it seems prudent and rational that Congress and the Courts would wish to provide to federal employees additional protections above and beyond those provided by the Constitution. The essential point to be made here is twofold: first; that every citizen is entitled to equal protection under the Constitution, and second; nothing written in any known law to date requires that a

U.S. citizen renounce or surrender his or her rights to protection under the U.S. Constitution.

In 1983 when Bush was decided, the CSRA had yet to validate it's worth, so the courts had every reason to believe that federal employees would finally be protected by, as was so frequently stated, "...an elaborate remedial system--constructed step by step..." to provide for redress for Constitutional violations. Unfortunately however,--12 years after passage of the CSRA--a review of the original legislative history of that Act in juxtaposition with it's demonstrated effectiveness--or ineffectiveness--in conjunction with the subsequent Congressional hearings which have been held, and concluding with the hearings leading up to the passage of the Whistleblowers' Protection Act of 1989, all combine to paint a legislative

version of the "Picture of Dorian Gray". Although originally intended as the highlight of the CSRA, the Office of Special Counsel has proven itself to be a consummate disaster for the very federal employees it was supposed to protect. Even as early as 1982, Congresswoman Patricia Schroeder, Chairwoman of the Post Office and Civil Service Subcommittee that spawned the CSRA, introduced a bill to abolish the OSC, stating that "...it now protects management and the administration from the whistleblowers. It's the reverse of Congress' intent." And, during the 7 years since Bush, Congresswoman Schroeder's alarm at the devious shenanigans of the OSC's miscarriage of justice has been supported by case after case of where the OSC has failed to investigate whistleblowers' complaints, and then when it did, failed to find any

evidence of prohibited personnel actions. A report by the Civil Service Subcommittee of the House Post Office and Civil Service Committee stated back in 1976: "[After] eight years..., the committee found that the Office of Special Counsel--the agency established to be the whistleblowers' advocate--has turned down more than 99 percent of whistleblower cases brought to it without initiating disciplinary or corrective action. For the last five years, since, 1981, the Special Counsel has not sought corrective action to restore the job of any whistleblower, including Pope. Since the establishment of the OSC, one Special Counsel has taught a course for Federal managers on how to fire whistleblowers. Another has expressed disdain for whistleblowers by referring to them as 'malcontents' and 'informants' and likening them to bag ladies and

mental health patients. One Special Counsel even warned would-be whistleblowers to keep quiet or they would get their heads blown off." H. Report 99-859, 99th Cong., 2nd Sess., p.17.

In light of the recent formal recognition by the Congress of the past failures of the OSC, it now becomes justified to review the Appeals Court 3-judge panel's December 5, 1986 decision on Spagnola. (Id. p.11)

"Inspection of the legislative history of the CSRA makes clear, however, that Congress intended to increase protection of federal employees who suffer reprisals for disclosing improper government conduct."

"Congress meant to provide additional protection to such federal employees because it recognized that the existing administrative and judicial remedies had

often proved inadequate." (and Id. p.12)

"It thus seems anomalous to attribute to Congress an intent to foreclose the preexisting, judicially-created remedy of a Bivens action in those instances in which a tort action is a whistleblower's only effective avenue of relief from exactly those evils sought to be averted by the (CSRA) Act. We cannot attribute to Congress an intent to put whistle-blowers in a worse position than they were in prior to the enactment of the CSRA."

"It thus seems plausible and not at all 'anomalous ' to attribute to Congress the intent both to supplant Bivens remedies when conceivably more favorable alternative remedies are available and to leave Bivens intact as a fall-back when they are not." (Id. p.13)

"We also conclude that mere resort to the OSC is not a 'constitutionally adequate'

remedy for the First Amendment violations alleged by Spagnola." (and Id. p. 14): "This circuit has expressly considered the constitutional adequacy of the OSC remedy available to Spagnola and has clearly concluded that such a remedy is an inadequate vehicle for vindication of constitutional claims."..."We thus do not hesitate to find that Spagnola's resort to the OSC is not an adequate remedy that precludes the availability of a Bivens suit for his First Amendment claims." "Our line of cases is simply too unequivocal in its clear rejection of the OSC as a remedy adequate to vindicate constitutional rights." (Id. p.19)

Justice Brandeis of this Court has stated:

"The supremacy of law demands that there shall be opportunity to have some court decide whether an erroneous rule of law was applied; and whether the proceeding

in which facts were adjudicated was conducted regularly. To that extent, the person asserting a right, whatever its source, should be entitled to the independent judgment of a court on the ultimate question of constitutionally." St Joseph Stock Yards Co. v. United States, 298 U.S. 38,84 (1936) (Brandeis, J. Concurring).

This Court applied these general principles in Oestereich v. Selective Serv. Bd., 393 U.S. 233 (1986). Justice Harlan stated, "[i]t is doubtful whether a person may be deprived of his personal liberty without the prior opportunity to be heard by some tribunal competent fully to adjudicate his claims." Id. at 243 n.6 (Harlan, J., concurring)

More recently, in Califano v. Sanders, 430 U.S.99 (1977), this Court stated that "[c]onstitutional questions obviously are unsuited to resolution in

administrative hearing procedures and, therefore, access to the courts is essential to the decision of such questions."

None of the Supreme Court's cases to date have squarely determined whether Congress can deprive an individual of a judicial forum in which to raise constitutional claims and substitute an unreviewable administrative decision.

Returning to Spagnola (1986), on p. 24, the footnote states "The constitutional command at issue here is the requirement of due process. Spagnola's right to fundamental fairness in having some place to litigate his constitutional claim is no less abridged by a court than it would be by congress; to hold otherwise would place the courts beyond the call of the Constitution."

Referencing the Bivens case itself, 403 U.S. at 397, this Court observed that

where there is an "explicit congressional declaration" that injured parties should be "remitted to another remedy, equally effective in the view of Congress, or where there are "special factors" counselling hesitation in the absence of affirmative action by Congress," id. at 396, the judiciary should decline to exercise it discretion in favor of creating damages against federal officials."

Following this guideline, nowhere in the legislative history of the CSRA does the Congress give "explicit congressional declaration" that injured parties should be remitted to another "equally effective remedy". Beyond that however, Pope seeks to make the case that first, there can exist no equally effective remedy for guaranteed constitutional protection, and second, that anything less than full constitutional protection is

unconstitutional. Therefore, enactment of such legislation by the Congress would be simply and unequivocally a violation of the constitution itself.

Though never mentioned in any of the relevant cases reviewed to date on this issue, one "special factor" looms beyond all others, and that is the concern for the viability of the U.S. court system itself. All U.S. courts, the Congress, and indeed the legal profession as a whole are fully cognizant of the very ominous specter of a plethora of frivolous Bivens lawsuits lurking at courthouse doors throughout the country. One need only to envision the floodgates that would open to the U.S. court system if the green light were given for federal employees to file Bivens damages suits whenever they fail in their efforts to gain a promotion or even to be hired by the federal government. Such access to

Bivens could even spawn suits by less well-intentioned individuals who might apply for promotions or jobs simply with the intention to file such suits when they were turned down.

Above the west side entrance to the U.S. Supreme Court building, carved in granite, are the words "EQUAL JUSTICE UNDER LAW". There is no footnote carved anywhere excepting federal employees. If, as is frequently repeated, the responsibility of the court system is not to uphold justice, but to enforce the law, then, at the very least, this Court--with full power to grant relief not explicitly authorized by Congress--must exercise its jurisdiction and provide a Bivens remedy for aggrieved federal employee Pope in light of the fact that no other avenue of redress has been available to him for the illegal wrongdoings that have been perpetrated

against him by defendants. Far more encompassing than that however, these defendants, who have likewise intentionally failed to take the available actions that would have saved the lives of more than 900 people killed in mid-air collisions since 1975, must be called to account for their nefarious actions and malfeasance against the very American flying public they were sworn to protect. Lacking such Court action, these scofflaw officials--and all other such federal officials--will consider themselves forever beyond the bounds of accountability.

REASON #2 TO GRANT WRIT OF CERTIORARI

TOTAL DISSIMILARITY BETWEEN

POPE vis-a-vis SPAGNOLA

Notwithstanding the Appeals Court September 30, 1988 en banc decision to rule against a Bivens remedy for Spagnola with their opinion that the discretion of

the OSC was a meaningful substitute for Constitutional protection, that Court opinion did, however, define a categorization difference between Pope and Spagnola on page 6:

"Neither Hubbard nor Spagnola could claim the more elaborate administrative protections--including judicial review--that Congress reserved for incumbent employees aggrieved by major (emphasis added) personnel actions (e.g., removals, reductions in grade or pay, suspensions of more than 14 days). See 5 U.S.C.7511-14, 7701-03 (1982).

Unlike Spagnola who was no worse off after having suffered the alleged violation than before, Pope was not only unilaterally transferred to the far reaches of the contiguous United States, he was the victim of an admitted ruse in fabricating a phoney job description to banish him out of FAA HQ, following which

he was subjected to more than two years of continual harassment including a trumped-up investigation that was proven to be totally unsubstantiated. Having been candidly advised by his Seattle supervisor that his job was phony, it was obvious from the beginning of his exile that at any point in time an evaluation could be made to show that the work that he didn't have to do, he hadn't done, which meant in essence that after a short period of time, defendants could proceed with termination action. All during this more than two years of literally being held hostage, Pope was separated from his wife, children, and home back in Virginia; a home that he had in early 1979 just completed designing and building. Thus, Pope was forced to serve out his sentence of banishment by enduring humiliation and harassment during his hours on duty, and then spend

the evening and nights alone in a rented room; day after week after year after year. The harassment which Pope underwent became ferocious after his subpoenaed Congressional testimony when orders were issued by defendant J. Lynn Helms (newly installed Administrator) to do whatever was necessary to force Pope out of the FAA and federal service. There can be no question but that Pope suffered a major personnel action and yet he was given not one hearing.

During his 15 year career with the U.S. Department of Transportation (12 years with the FAA), all building upon his previous 15 years of aeronautical experience with the Nebraska Department of Aeronautics and in industry, Pope had consistently received excellent evaluations from his previous supervisors. His performance was uniformly of the highest caliber with frequent quality pay

increases, bonus awards, and certificates of achievement, both from within and outside of government. Even in Seattle--that is, until his subpoenaed testimony took place--, Pope was rated for promotion potential and judged "...an experienced, mature and conscientious technical employee whose education and background provide good qualifications for employment/promotion in aviation safety management programs..."

But all at once--immediately after the dual events of his subpoenaed congressional testimony and the public exposure of defendants' ACAS cover-up on CBS "60 Minutes"--defendants complimentary attitude towards Pope changed to one of withering harassment. His supervisor, defendant Forrester, was the one tasked with the illegal assignment of carrying out defendant (administrator) Helms orders to terminate Pope's career. All

at once, defendant Forrester began taking every conceivable opportunity to fault Pope. In a continuing and unrelenting series of hairsplitting, hyper-technical allegations and trumped-up accusations, defendant Forrester managed--in the following few months--to amass a paper record he hoped was sufficient to have Pope removed on the array of charges previous mentioned. This vicious and inhumane attack which was directed at Pope every minute of every day finally succeeded in causing him to suffer severe mental and emotional stress along with the kind of physical pain indicative of serious physical problems. It was in early August then that on the advice of his physicians, Pope went on sick leave and returned to his home and family in Virginia to recuperate. Incredibly however, defendant Forrester still continued his relentless harassment by

long distance through the use of threatening letters to the point that Pope was forced to enter Sibley Hospital for stress evaluation and treatment. Still defendant Forrester continued his vendetta of abuse and without a pang of remorse notified Pope that termination action was being taken, and that one of the charges was being AWOL for his being in the hospital.

Amazingly however, even after they had successfully terminated Pope's federal career, defendants continued their unconscionable harassment against him by taking overt and forceful actions calculated to prevent his receiving unemployment compensation. Failing in that attempt, they next employed their voracious vendetta in an all-out effort to force a bi-furcated MSPB hearing that would force Pope and his legal counsel to the heavy expense of traveling out to

Seattle for presentation of their testimony before the (MSPB).

Eventually frustrated in their devious attempts to force a bi-furcated hearing, after 8 long months of pre-hearing legal jousting, the MSPB hearing was finally set for August 2, 1982. Once this date had been set, defendants tried time and again to induce Pope to call of the hearing, but each time they were summarily rebuffed for after all, this was to be the first time that defendants would be compelled to testify under oath regarding both their attacks on Pope and the scandal of their cover-up of the ACAS. Desperate to prevent a public airing of their misdeeds, at the "eleventh hour", they unilaterally rescinded Pope's firing action, and despite his vociferous objections, the Administrative Law Judge promptly cancelled the hearing.

Succeeding in their legal ruse to forestall the MSPB hearing, but then faced with the specter of Pope's possible return to work with the FAA, defendants next employed still another clever maneuver: in one fell swoop, they both cancelled his firing and at the same time insured that he would not return to the FAA. They accomplished this by placing him on "Retirement due to a Disability." Thus, in a fiendishly clever bit of legal gimmickry, defendants managed to employ a variation of the situation where a young boy kills his parents and then throws himself of the mercy of the court claiming that he is an orphan. In Pope's case, defendants intentionally and maliciously inflicted severe and lasting emotional trauma on him, and then, after rescinding his firing action to prevent an MSPB hearing, turned around and claimed that Pope was disabled,

incapacitated, and deemed unfit to return to service with the agency. And all of this ferocious retaliation premeditatedly leveled broadside against Pope by the ten named Bond et al.,defendants infuriated and fearful that this one individual sought--seeks--to reveal that hundreds of people have died--as will others in the future--in mid-air collisions that defendants could have taken action to prevent back in 1975.

Can there now be any doubt but that the circumstances of Spagnola vis-a-vis those of Pope are a universe apart. Whereas Spagnola was denied a promotion, his primary goal having been self-benefit, even though he may have been a victim of a Constitutional violation, such an act was classified as a minor personnel action. Conversely, Pope placed himself and his career directly in the line of fire between an errant

bureaucracy and the flying public. As a direct result of his attempts to save lives, Pope was unilaterally transferred, harassed for more than two years, and then finally fired, certainly a major personnel action by any means of measure, and all of this without any hearing whatsoever.--administrative or judicial.

The Constitutional issue to be addressed here is the requirement of due process. The system denied Pope his fundamental right to have his Constitutional claims litigated. Thus for Pope--as for Bivens--it is damages or nothing.

REASON 3 TO GRANT THE

WRIT OF CERTIORARI

THE MATTER OF INJURY

In Bush v. Lucas, plaintiff Bush was downgraded two grades for having publicly stated that his job was worthless. Although initially sustained by the Civil

Service Commission (CSC), an Appeals Board subsequently reversed that decision and Bush was restored to his original GS-15 position and awarded back pay. Bush was not transferred to another geopraphical location in the process, and except for the temporary decrease in pay, he was in no worse position than he was before his adverse personnel action took place.

In Schweiker v. Chilicky, respondents were 3 social security disability recipients whose monetary benefits were wrongfully terminated. More serious certainly than Bush, these individuals experienced a delay of many months before investigations and hearings restored them to disability status with full retroactive benefits. As difficult as it must have been for these three people during the interim period, the essential fact is that their injuries were temporary, and like Bush, after

their benefits were restored, they were no worse off than they had been before their traumatic event had taken place.

In Spagnola v. Mathis--and in the companion case of Hubbard v. EPA--both decided by the D.C. Appeals Court in their September 30, 1988 en banc decision, Spagnola sought a higher grade level, and when not selected, subsequently filed a suit for a Bivens remedy. After the denial action by the Appeals Court, Spagnola--and similarly Hubbard--found themselves no worse off than before their incidents began. Moreover, neither Spagnola nor Hubbard suffered any reduction or suspension in pay, as did both Bush and the three Chilicky litigants.

In reality, neither Spagnola nor Hubbard suffered any injury. Moreover, the temporary injury suffered by Bush, and even the much more severe injuries

suffered by the Chilicky litigants pale in comparison to the scope and severity of the permanent injuries suffered by Pope at the hands of Bond et al., who in brazen defiance of FAA rules, federal statutes, and the U.S. Constitution itself blackened Pope's reputation and 30-year exemplary career in aviation he had worked so long to achieve, ended his career in aviation--with the FAA as well as with any hope of being employed in the aviation industry--and, for a dedicated aviation safety professional such as Pope, ended the most meaningful part of his life. In forced exile, Pope also lost two plus years of his life during the separation from his wife and children from 1979 through 1981.

Bond et al.'s arrogant display of open warfare against a dedicated public servant was carried out in full view--and with complete disregard--of the U.S.

Congress and the American public. The defendants patently illegal actions were vigorously protested by a storm of letters from Congressmen and Senators of both parties. One of these letters, from Congresswoman Patricia Schroeder, warned the Secretary of Transportation (after she had learned that defendant Helms stated he "...would not tolerate whistleblowers...") that "...if he (Helms) cannot live within these requirements (the statement of President Reagan and the laws of the land), perhaps Administrator Helms should resign."

Another of the many Congressional letters sent to the Secretary of Transportation on Pope's behalf was co-signed by Congressmen Robert K. Dornan, Guy Vander Jagt, Congresswoman Schroeder, and Senator J. James Exon on 11/6/81: "Our concern (over the on-going adverse personnel action being taken by

defendants against Pope) is based on the inescapable conclusion that the personnel action was taken because of Mr. Pope's 'whistleblowing' activity in publicly disclosing the waste in the FAA's proposed Airborne Collision Avoid-dance System and his public complaints and testimony before Congress with regard to the general direction taken by FAA in the development of a mid-air collision avoidance system. Collectively, we now express our strongest objection to this recent ill-advised personnel action and ask that it be immediately rescinded."

Seldom--if ever-- has any whistleblower had the endorsement and support of his immediate supervisor, but Pope did. Allan Landolt, under whose supervision Pope worked in the few months before Landolt's FAA employment was terminated and Pope's office was abolished, testified:

"James Pope was an excellent FAA employee. He is the type of qualified, dedicated employee needed in greater numbers by the FAA, and should not be the object of retaliation or reprisal for carrying out assigned responsibilities... for aviation safety."

Dr. Mervin K. Strickler, Jr., a colleague of Pope testified: "I am convinced in my mind that Jim Pope was sent to Seattle in the hope that he would leave the FAA. It was an inhumane, punitive transfer. If Jim Pope's case is allowed to stand as is, no government official will ever be willing to speak out. what a tragedy for our form of government and way of life this represents"(emphasis added).

REASON #4 TO GRANT THE WRIT OF CERTIORARI

THE ISSUE OF THE DISMISSAL OF ORIGINAL DEFENDANTS BOND, ECKERT, ONSTAD AND WALK

BY THE DISTRICT COURT ON THE GROUNDS OF THE 3-YEAR STATUTE OF LIMITATIONS.

Though these four defendants had left FAA a few months prior to the original filing of Pope v. Bond et al., as if cast in stone, their orders and policies remained in full force and effect, and served as the foundation upon which subsequent defendants completed the process of firing Pope. Moreover, Pope was required by legal procedures to exhaust all administrative remedies prior to filing litigation against defendants, the final effort being the December 16, 1983 Steptoe and Johnson "MEMORANDUM IN SUPPORT OF JAMES C. POPE'S REQUEST FOR RETURN TO ACTIVE STATUS IN THE DEPARTMENT OF TRANSPORTATION." (App. F)

The legacy of Bond et al.'s vendetta against Pope was made all too clear when in 1985, Carol Walsh of CONWAL, INC., working for the Department of Labor in

still another effort to gain Pope's reinstatement with the FAA was told in no uncertain terms by FAA officials that there was "no way" Pope would ever be allowed back in the agency.

In requesting this writ of certiorari, Pope asks this Court to also review the arguments made to the D.C. Court on this matter and let a jury decide the question of the 4 named defendants' dismissal on the 3-year statute of limitation issue.

CONCLUSION

In repayment for his efforts to protect the flying public, defendants viciously and with malice aforethought methodically proceeded to inflict serious mental and emotional injuries on Pope with the obvious intention of terminating his aviation career, and they succeeded in doing just that--permanently.

In the instance of Pope v. Bond et

al., both justice and the law cry out for this Court to allow a jury trial asking not only redress for the injuries which defendants have visited against Pope, but retribution from the defendants for the laws which they have violated and the trust which they have abandoned in failing to protect the flying public.

Though the Whistleblowers' Protection Act of 1989 is not retroactive and will not benefit Pope, it will give such dedicated public servants new and meaningful avenues of redress that Pope did not have access to, but, at the same time will not open the legal floodgates to a plethora of frivolous lawsuits should this Court decide in its wisdom to grant Pope's request for a writ of certiorari. It must be emphasized in closing that Pope had no redress whatsoever: thus, in stark reality, as it was with Bivens, for Pope it is damages

of nothing.

In the words of U.S. Supreme Court justice Sandra Day O'Connor:

"But the hour will come for each of us, and because of this, we surely must also know that the very nature of humanity and society, regardless of its size or complexity, will always turn on the act of the individual and, therefore, on the quality of that individual."

Pope has demonstrated that he is that caliber of individual, and in return for the recognized and dedicated service he has given to his country in the field of aviation safety--he asks this Court to issue a writ of certiorari to the U.S. Court of Appeals for the D.C. Circuit.

Respectfully submitted,

James C. Pope, Counsel Pro Se
987 spencer Road,
McLean, VA, 22102
(703) 734-0987

APPENDIX A

United States Court of Appeals

for the District of Columbia Circuit

No. 89-5186 September Term, 1989

C.A.No. 84-2922

James C. Pope, Appellant FILED

v. Dec 29, 1989

Langhorne Bond, et at., Constance L. Dupre

Before: Ruth B. Ginsburg, Williams

and Sentelle, Circuit Judges

ORDER

Upon consideration of the motion for summary affirmance, the opposition thereto and the reply, it is

ORDERED that the motion for summary affirmance be granted. Appellants claims fall within the scope of grievances redressable by the Civil Service Reform Act, 5 U.S.C.2300 et seq.(1978). appellant therefore may not maintain a constitutional tort action against the individual federal defendants. See Spagnola v. Mathis, 859 F.2d 223 (D.C.Cir.1988) (en banc). See also Schweiker

v. Chilicky, 108 S. Ct. 2460 (1988)

The clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. see D.C. Cir. Rule 15.

Per Curiam

APPENDIX B

Department of Transportation

Federal Aviation Administration, Wash, D.C.

EXECUTIVE COMMITTEE MINUTES

75-E7

December 16, 1975

4:30 p.m.

Chairman: Mr. Dow

Attendees: Weithoner, Cockran, Israel, Sheftel, Meister, Flener, Landolt, Ferrarese, Kuykendall

Assessment of Airborne Collision Avoidance Systems (ACAS)

The following three systems were evaluated:

Manufacturer	Name	Type
McDonnell-Douglas	EROS	Time/Freq
RCA	SECANT	Interr/Transpond
Honeywell	AVOIDS	Interr/Transpond

On the basis of cost and performance, the Honeywell AVOIDS II system would be the clear choice for implementation. This solution could, with an early decision, reach a high level of effectiveness by 1983-84. The total

cost through 1985 (for both civil and military) would be about $600 million.

Mr. Dow stated the necessity for the agency's having a positive plan of action. He said that once a decision is made, an agency package must be prepared outlining the program and stating the agency's objectives. He feels FAA must be prepared to give a full accounting to Senator Cannon, who instigated the report, and that a large part of that discussion will deal with the elimination of ACAS, in view of the fact that three ACAS systems have been tested and one of them meets all the objectives of the agency.

APPROVED: /s/ D. P. Castleberry, Dir, Executive Secretariat DATE: 1/13/76

FOR OFFICIAL USE ONLY

Public Availability To Be Determined Under 5 U.S.C. 552

APPENDIX C

DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION, WASH, D.C.

February 9, 1976

Honorable Howard W. Cannon

Chairman, Subcommittee on Aviation

Committee on Commerce

U.S. Senate, Washington, D.C.,20510

Dear Mr. Chairman:

In May 1974, the FAA testified to the Subcommittee on Aviation of the Senate Commerce Committee regarding the issue of midair collisions. We provided information on the status, progress, and plans for improving midair collision protection and stated that we were proceeding with the evaluation of the Airborne Collisions Avoidance Systems (ACAS) being offered by McDonnell-Douglas, Honeywell and RCA.

We have now completed the analysis and flight testing of these three systems; the technical assessment was supplemented by an independent cost analysis performed by ARINC

Research, Inc. We have concluded that the Honeywell system offers superior performance and lower cost of the three systems, but concerns still remain in the area of false alarms and compatibility with the present ATC system. (emphasis added) A final report summarizing the comparative testing is now in printing and will be forwarded to you within one month.

(However), we have concluded that the desired increase in separation assurance protection can best be achieved by alternatives other than ACAS, in a manner which provides protection in an equivalent time, at a reduced cost, and minimizes the problems of false alarms, ATC compatibility, and transition to future ATC services.

Sincerely,

/s/ John L. McLucas

Administrator

APPENDIX D

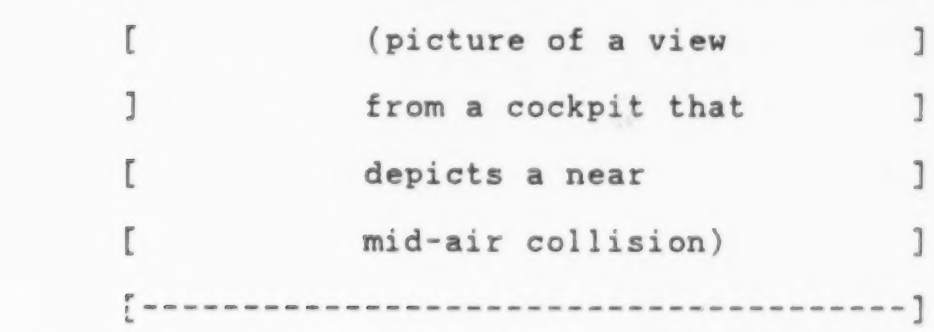
January 1976

SOME DAY THERE WILL BE A SOLUTION

TO MIDAIR COLLISION PROBLEMS

THAT SOMEDAY IS TODAY AT

HONEYWELL



* Practical in size, weight, and cost
* Ability to handle extremely high density air traffic (up to 800 aircraft within a 70 mile radius)
* Virtually a zero false alarm rate
* Compatibility with the ATC system
* Versatility--the ability to meet both the cost and technical needs of high performance jet aircraft and single engine propeller driven aircraft

HONEYWELL has developed, manufactured, and

tested two collision avoidance systems that meet all the above requirements. AVOID-1 is designed for airliners and others users of high performance jet aircraft. AVOID-2 is a more simple, less costly, and meets the needs of smaller and slower aircraft.

HOW DOES IT WORK--WHAT DOES IT DO

Both systems consist of the following:

* Two Antennas-acting together, the two antennas send out coded RF (radio frequency) signals all around the aircraft. One antenna covers the hemisphere of space above the aircraft; the other covers the hemisphere of space below the aircraft. The same antennas also receive the RF signals from other aircraft. Both aircraft are electronically made aware of the others' presence.

APPENDIX E

Subpoena Duces Tecum

(Hearing)

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

OF THE CONGRESS OF THE UNITED STATES

OF AMERICA

TO: Mr. James C. Pope

You are hereby commanded to be and appear before the Sub Committee on Transportation, aviation, and Materials of the House of Representatives of the United States, of which the Hon. Dan Glickman is chairman, in Room 2325 of the Rayburn Building House of Representatives in the city of Washington, on March 31, 1981 at the hour of 9:30 a.m. then and there to produce the things identified on the attached schedule and to testify touching matters of inquiry committed to said Committee; and you are not to depart without leave of said Committee.

TO: Tim Lockett to serve and make return.

Witness my hand and the

seal of the House of Representatives of the United States, at the city of Washington, this 25th day of March, 1981

/s/ Dan Glickman

Attest:

/s/ Edmund L. Henshaw, Jr.

Clerk

APPENDIX F

A Presentation to

UNITED STATES
DEPARTMENT OF TRANSPORTATION

OFFICE OF GENERAL COUNSEL

MEMORANDUM IN SUPPORT OF JAMES C. POPE'S REQUEST FOR RETURN TO ACTIVE STATUS IN THE DEPARTMENT OF TRANSPORTATION

Robert W. Fleishman
Stephen A. Fennell
Shawn C. Conway
Steptoe & Johnson
Chartered
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

December 16, 1983

APPENDIX F

MEMORANDUM IN SUPPORT OF JAMES C. POPE'S REQUEST FOR RETURN TO ACTIVE STATUS IN THE DEPARTMENT OF TRANSPORTATION

I. INTRODUCTION/OVERVIEW

James C. Pope is a GS-15 aviation safety expert in the Federal Aviation Administration ("FAA"). He has provided the FAA with fifteen years of conscientious service, but, for the last two years, has been an inactive employee. This memorandum addresses Mr. Pope's years of service and the acts and events that lead to his present inactive status. It is intended that the information presented will lead to Mr. Pope's activation to a position in the Department of Transportation reflective of his talents, experience, and years of loyal government service.

The chain of events resulting in Mr. Pope's present inactive status began during his service in the FAA's Office of General Aviation ("AGA"). There, Mr. Pope played a role for the FAA very similar to

that of an ombudsman who carefully monitored the needs and represented the viewpoint of the general aviation community. One of the issues he was instructed to evaluate was the feasibility of various devices designed to eliminate midair collisions. He evaluated these devices for several years and reached an unpopular, but sound conclusion that has embroiled him in controversy ever since.

Mr. Pope became convinced that a small, inexpensive, airborne collision avoidance system ("ACAS") device, developed by private industry, not only merited FAA certification, but would, if installed, eliminate most midair collisions. He presented his view within the agency that such a system should be adopted, rather than a ground-based system the FAA had planned to research and develop using government funds.

FAA-sponsored studies showed that Mr. Pope's beliefs were well-founded. The ACAS system was not only more reliable than ground-based system, but also much less expensive and available for immediate use. During the period 1976-77, the FAA gave little heed to his advice. Unfortunately, an airliner crash in 1978 might have been prevented by the ACAS system with a savings of one hundred forty-four lives.

Mr. Pope's support of ACAS earned him and the office in which he worked the animosity of several top-ranking FAA officials in the Carter Administration. In June 1978, FAA Administrator Langhorne Bond announced the disestablishment of that office. Almost all of the personnel from the office were reassigned to other offices in FAA headquarters in Washington, D.C. Despite the availability of other positions, and the desire of career FAA officials that he work for them in those

positions, the political appointees in FAA headquarters determined to transfer Mr. Pope to Seattle, Washington, apparently to punish him and to suppress his views.[1/] Mr. Pope was the only member of the AGA transferred against his will to an office outside Washington.

In Seattle, a new position, without duties, was created specifically to accommodate Mr. Pope's transfer. He spent over a year there unsuccessfully seeking meaningful work. At the end of that period, he decided that he should not remain silent about the unusual circumstances surrounding his transfer and the creation of his position in Seattle. He determined that the Agency's failure to adopt the ACAS system or even to admit its availability and reliability publicly should not remain hidden behind his

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1/ See Exhibit 123.

transfer. His efforts to speak out on both the transfer and the ACAS controversy resulted in a series of swift and unusual actions by the FAA in the closing days of the Carter Administration.

The FAA's response to the appearance of an article on Mr. Pope in the Seattle Times on October 30, 1980, was to reassign him to a new supervisor, who inundated him with work. Immediately following Mr. Pope's interview by the CBS news program "60 minutes," the new supervisor began a memo campaign criticizing and harassing Mr. Pope at every conceivable opportunity. The barrage of threatening memos intensified when Mr. Pope was subpoenaed to testify before Congress on ACAS.

The stark contrast between this harassment and the exemplary personnel record Mr. Pope had compiled during his fifteen-year career with the FAA made the

motivation behind the actions transparent. Nonetheless, the campaign reaped the result it appears to have been calculated to achieve. Mr. Pope was eventually hospitalized on his physician's advice for treatment of mental and emotional stress. Even then, the harassment did not top. Evidently thinking he had amassed a sufficient paper record. Mr. Pope's supervisor decided to remove Mr. Pope of being "absent without leave" during his hospitalization.

After his release from the hospital and while continuing treatment, Mr. Pope resolved to contest the removal action. He filed a grievance to the Merit System Protection Board. While that was pending, the Federal Office of Workers' Compensation Programs determined that he was medically disabled as a result of on-the-job stress and awarded him worker's compensation benefits. The Federal

Government's Office of Personnel Management reached a similar conclusion. Under a new administration, the FAA withdrew its accusations, agreeing to drop all charges and purge Mr. Pope's personnel file of the removal orders. Since that time, Mr. Pope has continued receiving his worker's compensation benefits.

The available evidence strongly suggests that the acts of harassment and retaliation against Mr. Pope cannot be explained simply as the vindictive efforts of an errant supervisor. Their connection to the earlier transfer decision is manifest. Although former Administrator Bond had attempted to place Mr. Pope "out of sight and out of mind," his successor, J. Lynn Helms, was sufficiently aware of Mr. Pope to comment to then Congressman Robert K. Dornan in reference to Mr. Pope: "I don't tolerate whistleblowers." Representative Dornan and

other members of Congress from both the Senate and the House have appealed to Mr. Helms and others to remedy the injuries caused Jim Pope by the actions initially taken by the predecessor administration. Their efforts, to date, have been to no avail.

This memorandum is a continuation of those efforts. As Jim Pope recovers from his disability, he is anxious to return to a position of responsibility in the Department of Transportation commensurate with his experience, training, and skills. Through a fuller description of Mr. Pope's service record, the ACAS controversy, and his exile to Seattle, the remainder of the memorandum will demonstrate that he deserves to be returned to a responsible position and compensated for the injuries he has suffered.

II. MR. POPE'S EMPLOYMENT BACKGROUND AND EXPERIENCE

James C. Pope began public service with the Federal Aviation Administration ("FAA") in 1966 as a GS-14 Mechanical Engineer.[2] He was recruited[3] to this position due to his exceptional qualifications as a mechanical engineer,[4] pilot,[5] and aviation safety expert.[6]

2/ Exhibit 1.

3/ Dr. Mervin K. Strickler, Jr., acknowledges that he and another FAA colleague, Ralph R. Lovering, "actively recruited James C. Pope from industry and state service to join the federal service. We felt we needed expert, objective points of view. Jim Pope never disappointed us." Affidavit of Mervin K. Strickler, Jr., 1-2 (Dec. 8, 1983). Exhibit 2.

4/ Mr. Pope earned a B.S. degree in Mechanical Engineering from the University of Minnesota, Institute of Technology. He is Civil Service qualified in several engineering disciplines: Aeronautical, Aerospace, Electrical, Mechanical, and General Engineering. Exhibit 3.

5/ Mr. Pope has been a pilot since 1946 and has an Airline Transport Pilot Certificate with more than 5,000 flight hours. He is an FAA certificated flight instructor for airplanes, instruments, and rotorcraft (helicopters). Exhibit 4.

6/ The majority of Mr. Pope's (continued...)

6/(...continued)
professional experience has been in aviation safety. Upon graduation from the University of Minnesota, he served as safety engineering supervisor for a large casualty insurance company except for the period 1952 to 1953, when he performed engineering test, and development work on jet engine controls. In 1959, he was named Chief, Aviation Safety, for the Nebraska Department of Aeronautics. This position included the responsibility for flying the governor and state executives. In 1964, Mr. Pope was hired as Vice President of Engineering for In-Flight Devices Corporation, where he directed the manufacturing and marketing of an Automatic Landing Gear Control which he had designed and patented.

Robert A. Kauffman, Mr. Pope's former supervisor as President and General Manager of In-Flight Devices Corporation, has gone on record since Mr. Pope's difficulties with the FAA to dispel any doubt concerning his capabilities and competency as an engineer. Mr. Kauffman summarizes Mr. Pope's professional experience with In-Flight as follows:

> From a period of April 1966 through November 1966, Mr. James Pope worked directly for me in the capacity of Director of Engineering for IFD. His responsibilities were broad and included conceptual design, prototype development and testing, and finished product certification. In addition he did a majority of the engineering
> (continued...)

Prior to his federal government service, Mr. Pope had served as Chief, Aviation

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6/(...continued)
drafting, laboratory experimentation, ground and flight tests.

Particularly significant were the FAA designations as DER for engineering and flight tests for SAGA (Semi Automatic Gear Actuator) systems.

During his tenure of employment, Mr. Pope was responsible for more than 12 STCs for the installation of this system in various types of aircraft.

It is of particular note that during this period, Mr. Pope pioneered a new approach with Eastern Region on STCs that would cover a variation of aircraft rather than a single STC for a given aircraft. An example would be that the STC certification for the SAGA system in the Bonanzas covered all models from The A-35 through the V-35 on a single STC.

I found Mr. Pope to be a dedicated, hard-working individual with a high degree of integrity and a sincere dedication to aviation safety.

Letter from Robert A. Kauffman to James Pope (Feb. 4, 1981). Exhibit 5.

Safety, for the Nebraska Department of Aeronautics and as Vice President of Engineering for In-Flight Devices Corporation.7/ Mr. Pope was originally hired as an FAA Mechanical Engineer to supervise the development of rules governing crash-worthiness and passenger evacuation. He later coordinated research and development projects for the FAA's Flight Standards Service in Washington, D.C.

In 1972, Mr. Pope was promoted to Chief of the Industry/Government Liaison Division in the Office of General Aviation ("AGA"), which was created to deal with the private aviation community. In this capacity, he acted as a consumers' advocate and an ombudsman for members of the general aviation community.8/ As part of this

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(Continued . . . .)

7/ Exhibit 3. See also note 7, supra.

8/ Allan F. Landolt, the Assistant Administrator for General Aviation and head of the AGA from 1974-1976, explains the history of the AGA and its role as FAA ombudsman for the general aviation community as follows:

> The Office of General Aviation Affairs was created within the agency to address its responsibility towards general aviation. Its first acts were in opening doors within the agency which had previously been closed to the general aviation community and its needs. As a result of the explosive growth of general aviation and the failure of the agency-developed programs, systems and regulations to provide adequately for general aviation needs, serious problems arose and in my judgment continue to plague general aviation. Administrator Jack Schaeffer, recognizing the need to elevate the role of general aviation within the agency, instituted the Office of General Aviation headed by an Assistant Administrator answering directly to him with voice and vote in the top committees of the agency on policy development, regulatory matters, budget and personnel selection. During the years I served with the agency, I was that Assistant Administrator.
>
> The Office of General Aviation became in fact the general aviation community advocate voice and vote within the regulatory

(Continued . . . .)

8/ (Continued . . . .)

> agency. At the same time, the office shared the responsibility of the agency to promote and foster safety and assure free access to the airspace. As responsible FAA employees, General Aviation's staff presented general aviation's needs and interest in the development of agency policy and regulatory matters. Once these policies and regulations were adopted by the agency, the Office represented the Administrator before the aviation community, amplifying his voice and educating the public to these policies and regulations. Simply stated, the Office was the advocate voice and vote, within, and the catalyst through which government, industry and the pilot community worked to jointly seek solutions to their problems.

Affidavit of Allan F. Landolt 1-3 (Nov. 12, 1980) (emphasis added). Exhibit 6.

Other FAA officials recognized the AGA's role as an ombudsman. The Chief of the Technical Analysis Branch of the FAA Office of Aviation Safety has attested that:

> The Office of General Aviation was established to represent the aviation industry within the FAA. It acted as a sort of ombudsman for the industry and this placed it often at odds with other parts of FAA.

Affidavit of Robert E. Jones 1 (July 1981). Exhibit 7.

function, he analyzed every major FAA research and development program affecting general aviation. He took very seriously his responsibility to protect the interests of the flying public.[9/]

Mr. Pope's approach to his job earned him a reputation for conscientious work and effective problem solving.[10/]

9/ See Exhibit 8; see generally Affidavit of James C. Pope (Aug. 25, 1982). Exhibit 9.

10/ See Exhibit 8. This reputation is affirmed by Mr. Pope's former supervisor in the AGA:

> James Pope typified [the AGA] and in carrying out his responsibilities as assigned by me, was assigned various priority programs that were being developed within the agency. His performance was consistently of the highest quality. Reference to his fitness reports, his quality in grade pay raises and bonuses,

(continued...)

This did not go unnoticed by then FAA

10/(...continued)

> certificates of achievement and his many testimonial letters received will document this opinion. To my personal knowledge, he made significant contributions to many important FAA programs. He was always willing to stand up straight for issues in which he believed and which he thought best served the public interest and safety.
>
> * * * *
>
> James Pope was an excellent FAA employee while under my supervision. While a member of the bureaucracy, he has the clarity of thinking, integrity and character so that he will never be a 'bureaucrat' in the invidious meaning of that term, but will perform his duties as assigned in the highest manner as an able member of the agency and as its representative to the aviation community. He is the type of qualified, dedicated employee needed in greater numbers by the FAA and other federal agencies. He should not be the object of retaliation or reprisal for carrying out assigned responsibilities and for speaking out for flying safety.

Affidavit of Allan F. Landolt 3-5 (Nov. 12, 1980). Exhibit 6.

Administrator Alexander Butterfield. In 1974, Mr. Pope was appointed Acting Assistant Administrator for the AGA.[11/] In this position, he was one of the five highest-ranking officials in the FAA.[12/]

III. THE MIDAIR COLLISION AVOIDANCE PROGRAM CONTROVERSY

11/ Exhibit 10.

Mr. Pope also spent three years, from December 1967 to January 1971, as Program Manager for the National Highway Safety Administration, where he administered $4.5 million in demonstration programs.

12/ In the course of his career with the FAA and in particular his assignment as Chief, Industry/Government Liaison, Mr. Pope received numerous awards and certificates of recognition both from within the FAA (Exhibits 11-14) and from the General Aviation Community (Exhibits 15-17). He received a certificate of Outstanding Service from the Administrator of the Federal Energy Office for management of the General Aviation Fuel allocation program during the 1973-74 energy crisis (Exhibit 18). He has also received recognition in other FAA performance ratings (Exhibits 19-20), inter-office memoranda (Exhibits 21-26) and a $1,000 cash award in the Recognition and Awards Program (Exhibit 27).

In his first year in the AGA, Mr. Pope became involved in the evaluation of several airborne collision avoidance systems ("ACAS") being developed by private industry.[13] An ACAS device is a small electronic cockpit instrument that warns pilots of potential collisions and helps them make evasive maneuvers. They are designed as a backup in case of failure of the ground-based air traffic control system.[14]

13/ A very thorough explanation of the ACAS concept and comparison of it to other midair collision avoidance systems is provided in Doherty, Collision Course, Reason 37 (June 1982). Exhibit 28. See also Exhibits 29-30.

14/ Mr. Pope has related the following account of early ACAS development:

> Early in the 1970's the General Accounting Office investigated and reported on the status of FAA efforts to find a solution to the mid-air collision problem. They reported that significant controversy existed regarding the best approach and that the FAA has insufficient analyses and justification on which to base a decision. They recommended the
>
> (continued...)

14/(...continued)

FAA perform additional analysis, identify and justify their recommended solution, and finalize the necessary development work. The Administrator agreed with the GAO report and recommendations.

Private industry manufacturers had been experimenting with ACAS devices for many years. The McDonnell- Douglas Corporation had also developed once such system, called EROS (Eliminate Range Zero System) to prevent the recurrence of the collision which occurred in 1960 between two of its aircraft during routine flight tests. EROS was demonstrated to the FAA in 1963. It has been effectively and extensively used by McDonnell Douglas since that time. However, one of the main problems with EROS was that the airborne devices required precise timing which was transmitted from a ceasium atomic clock on the ground.

The Air Transport Association (ATA) evaluated the EROS system and determined it would be desirable for use on commercial air carriers.

After conducting an extensive flight test evaluation in the late 1960's, ATA recommended that the system be endorsed by the FAA and implemented in civil aviation aircraft. But in 1971, top level

(continued...)

In 1971, Mr. Pope's supervisor instructed him to evaluate an ACAS designed by McDonnell Douglas. Piedmont Airlines had tested this device in the late 1960's. Although the Piedmont pilots reacted enthusiastically to the device, Mr. Pope felt the system was too complex and expensive for small aircraft owners. He reported this view to his supervisor. The FAA then decided to shelve the McDonnell Douglas system.

Over the next two year, 1972-73, Mr. Pope continued to review technological advances in ACAS by companies such as Honeywell and RCA. He gradually became convinced that the Honeywell "AVOIDS"

14/(...continued)
officials decided to shelve EROS, not only because of its complexity and expense but because it was developing its own in-house IPC system as a backup to the ATC ground based system.

Affidavit of James C. Pope 15-16 (Aug. 25, 1982). Exhibit 9.

system could provide excellent protection from midair collision at a price per aircraft ($1180) affordable to the general aviation community. When he began to promote FAA certification of ACAS, however, he met stiff resistance, particularly from the research and development division of FAA.

On January 16, 1976, Mr. Pope completed his analysis of a proposed Aircraft Separation Assurance Program ("ASAP"). His internal agency report discussed the irresponsibility he saw in the FAA's approach to ACAS:

> FAA's Office of Engineering and Development (AED) has, for the past several years, maintained an uncompromising program, having as its prime goal the development of the Discrete Address Beacon System / Intermittent Positive Control (DABS/IPC). Everything that AED has done by word and deed has been calculated to achieve this end result . . . . What [the Industry/Government Liaison Division has] a problem with are the subterfuge, delay tactics, and technological hocus-

> pocus employed in furtherance of achieving the DABS/IPC objective.
>
> During these past few years, when any potential threat has arisen, it would either be ignored, overwhelmed, studied to death, or DABS compensated.
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> * * * *
>
> In essence, we believe the facts brought forth in for the AED plan for protection against mid-air collisions absolutely do not justify the conclusion that BCAS [the Agency's proposed system] is preferable over ACAS. Conversely, we believe that millions of dollars that will be allocated for the development of BCAS are not only totally unnecessary, but have an infinitesimal chance of ever evolving a viable product.15/

Mr. Pope's supervisor, Allan Landolt, concurred in this assessment and forwarded the report to the FAA Administrator with a cover letter objecting to the AED recommended policy.16/ This

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15/ Memorandum from James C. Pope to Chief, Industry and Government Liaison Division 1-2 (Jan. 16, 1976). Exhibit 31.

16/ Letter from Allan F. Landolt to FAA Administrator (Jan. 16, 1976). Exhibit 32.

letter produced little positive effect. The AGA's position was merely noted as "non-concurrence." Mr. Landolt wrote the Administrator again on September 9, 1976, pointing out that "this situation raises extremely serious questions concerning the integrity of our ASAP program."[17/] There was no response to Mr. Landolt's suggestion of a meeting to discuss the issue. Elements within the FAA continued their efforts to disparage the ACAS concept.[18/]

During this same period, the FAA undertook a four-year, $11 million ACAS evaluation program. On December 16, 1975,

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17/ Letter from Allan F. Landolt to FAA Administrator (Sept. 9, 1976). Exhibit 33.

18/ The FAA cover-up of ACAS was apparent to FAA officials other than Messrs. Pope and Landolt. Mary Anderson directly confronted Administrator Langhorne Bond with the MITRE report and attended a briefing of the Administrator's Executive Assistant. Mr. Bond later denied any specific knowledge of the MITRE report under oath. See notes 29-31 and accompanying test, infra.

top-level FAA officials met to discuss the results of this program for a pending report to Congress. FAA report 75-E7 concluded that:

> On the basis of cost and performance, the Honeywell AVOIDS II system would be the clear choice for implementation. This solution could . . . reach a high level of effectiveness by 1983-84. The total cost through 1985 would be about $600 million.[19]

These results were recorded in Executive Committee Minutes that were promptly classified "FOR OFFICIAL USE ONLY." The minutes also recorded the FAA's first documented move to suppress ACAS:

> Mr. Dow [Acting FAA Administrator] stated the necessity for the agency's having a positive plan of action. He said that once a decision is made, an agency package must be prepared outlining the program and stating the agency's objectives. He feels FAA must be prepared to give a full accounting to Senator Cannon, who

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19/ Executive Committee Minutes (75-E7) of December 16, 1975, 4:30 p.m., p. 4 (Jan. 13, 1976). Exhibit 34.

> instigated the report, and that a large part of that discussion will deal with the elimination of ACAS, in view of the fact that three ACAS systems have been tested and one of them meets all the objectives of the agency.[20]

Instead of rejoicing in the ACAS news, the executive committee resolved to proceed with development of its own ground-based midair collision avoidance system, the Discreet Address Beacon System/Automatic Traffic Advisory and Resolution Service ("DABS/ATARS"). The FAA then commissioned two additional studies by the MITRE Corporation, an independent think tank, to further evaluate ACAS.[21]

The results of these two studies were reported in June and July 1976. The

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20/ Id. at 9 [emphasis added].

21/ An earlier MITRE report had already stated that the FAA's IPC (later renamed ATARS) would not be needed in an ACAS environment. The MITRE Corporation, "Analysis of Alternatives for Improving Air Traffic Control Surveillance, Collision Avoidance, and Communications" (September 1975). Exhibit 35.

first, "Near Midair Collision Data Analysis," compared the effectiveness of proposed collision avoidance systems in relation to near midair collisions ("NMAC's"). It concluded that "[i]f ACAS had been installed on all aircraft (similar to DABS/IPC), then the ACAS could have possibly prevented all of the preventable (173) NMAC's compared with 126 possibly prevented by DABS/IPC."[22/]

The superiority of ACAS was similarly borne out by the results of the second MITRE report, "Impact of the UG3RD ATC System on Aviation Safety."[23/] This

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22/ The MITRE Corporation, "Near Midair Collision Data Analysis" 26 (June 1976). Exhibit 36.

Near midair collisions occur daily. See letter from Neil Hennigan, Battelle Columbus Laboratories, to Jim Pope (Aug. 30, 1982). Exhibit 37. See also New York Times p. 1 (June 22, 1980). Exhibit 38.

23/ The MITRE Corporation, "Impact of the UG3RD ATC System on Aviation Safety" (July 1976). Exhibit 39.

companion study compared the potential of ACAS with BCAS and DABS/IPC(ATARS) in the cases of 494 actual midair collisions which had occurred during the nine-year period 1964-1972. The report found that 228 of the incidents could conceivably have been prevented with existing systems or technology under consideration. Improvements in the existing Air Traffic Control system would have prevented 118 accidents. The interim (BCAS) system would have prevented two more. The DABS/IPC would have avoided 190 -- a gain of 72. The ACAS system, however, would have prevented all 228 collisions.[24/]

Mr. Pope was invited to a briefing on the two MITRE reports in May 1976.[25/] By the end of the meeting, it

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24/ Id. at 24-34.

25/ See generally Memorandum on MITRE briefing from James C. Pope to Chief, Industry and Government Liaison Division (continued...)

was apparent to Mr. Pope that the FAA Research and Development division considered the studies disastrous. ACAS not only threatened the substantial portion of their $70 million/year research and development budget earmarked for DABS/IPC(ATARS) development, but also endangered the agency's plans to expend over $5 billion implementing the in-house system instead of a system developed by private industry. Consequently, the two reports were never officially released. A later attempt to obtain copies provoked the response that MITRE's work "was not a formal report, but rather was a briefing given by the MITRE Corporation to our engineering offices in June 1976."[26/] The

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25/(...continued)
[Allan F. Landolt] (July 30, 1976). Exhibit 40.

26/ Letter from Administrator Langhorne Bond to Congressman Elliott H. Levitas (May 11, 1979). Exhibit 51.

only copies known to have survived the briefing were carried out of the room by Mr. Pope.

IV. FAA RETALIATION

A. Abolition of the Office of General Aviation

Mr. Pope was deeply troubled by the appearance of a lack of concern for public safety on the part of the FAA. He continued expressing his views on the cover-up of ACAS from 1976 through 1978 but, as a loyal employee, kept that criticism within the agency. During this period, his refusal to silence his views within the agency exacerbated the animus of some FAA policy-makers towards him. It became increasingly apparent that the FAA would not relent and give ACAS a full and fair appraisal. At the same time, the odds that human lives would be lost (because an effective collision avoidance system was

not being used) continued to grow.[27/] Mr. Pope, with the approval of his supervisor, began providing information on ACAS to aviation trade journals and consumer groups.

This act was viewed as "whistleblowing" by the FAA leadership under the Carter Administration. Its connection to Mr. Pope's critical role in the Office of General Aviation also did not go unnoticed. When Langhorne Bond was named FAA Administrator, certain officials persuaded him to abolish the unpopular AGA despite its critical function in bringing the needs of the general aviation community

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27/ Mr. Pope's worst fears were realized on September 28, 1978. A Pacific Southwest Airlines flight collided with a small craft in San Diego, killing 144 persons. Mr. Pope and other experts agree this collision could have been avoided had the FAA approved and certificated one of the exiting ACAS devices. See, e.g., Seattle Post-Intelligencer, Apr. 1, 1981, at A13. Exhibit 41.

to the attention of the FAA bureaucracy.[28/] The decision to

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28/ The former head of the AGA identifies the insistent objectivity and conscientiousness of its staff, particularly Mr. Pope, as the reason for the unpopularity which led to the office's abolishment:

> Position papers were frequently developed by the Office of General Aviation and circulated to other FAA departments involved in particular issues which our office faced. The papers were a product of the office and signed by me. The staff input for most of the priority programs fell to Jim Pope, and I assigned primary responsibility to him to handle the most difficult problems because I was aware of his capability and knowledge and they were in the area of his expertise. In most cases the facts generated and the analysis reflected in the office's position papers showed an objectivity which was not always shared by the advocate of the particular program or regulation. As the interests, attitudes and needs of general aviation in these matters were elevated by our office to assure full evaluation by FAA committees and by the Administrator, this frequently generated the personal ire of some advocates in other department. Engineering and Development and other FAA departments were often
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> (continued...)

disestablish AGA was announced n June 1978. Administrator Bond assured the affected

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28/(...continued)

> sources of these attitudes. As programs like the Microwave Landing System became known as a $60/100 million dollar bureaucratic blunder and the Beacon Collision Avoidance System advocated by FAA as an unquantified cost future system with little likelihood of success, these attitudes became vindictive and focused on the employees within reach and particularly focused on James Pope. In fact, Mr. Pope was known for the strong position he took on issues of safety to the flying public.

Affidavit of Allan F. Landolt 3-4 (Nov. 12, 1980) [emphasis added]. Exhibit 6.

The Microwave Landing System ("MLS") issue Landolt refers to was an earlier example of Mr. Pope's disclosure of FAA boondoggles. Mr. Pope's division opposed FAA proposals to develop its own MLS in spite of an existing system developed by private industry. Exhibit 42. Public aviation organizations overwhelmingly agreed with the AGA's view. Exhibit 43. When the FAA;s previously undisclosed intent to proceed with its in-house development plans became public, Exhibits 44-45, Mr. Pope's office was blamed. Exhibit 46. A similar reaction occurred following an article (based on an interview of Mr. Pope) which criticized FAA policy regarding an aviation weather reporting program. Exhibits 47-48.

employees that they would all be reassigned to positions within their grade in the Washington, D.C., headquarters.

B. Seattle Transfer

Shortly thereafter, Mr. Pope's fears for public safety came true. A tragic collision occurred between a Pacific Southwest Airline flight and a small craft over San Diego, killing 144 persons on September 28, 1978. If ACAS had been on board, the tragedy very likely could have been avoided. Knowledge of this fact spurred him into further action and, at the same time, sealed his personal fate within the FAA.

Unsuccessful in his personal efforts to make the Administrator take notice of ACAS, Mr. Pope prevailed upon Mary Anderson, the Associate Administrator for Policy Development and Review, to make the new Administrator aware of the MITRE reports. Ms. Anderson complied:

After my arrival at the FAA, I became aware of an FAA-contracted study by the MITRE Corporation comparing various midair collision avoidance systems. The study suggested that an available device designed by Honeywell would effectively alert aircraft of potential midair collisions. I was aware that Mr. Pope advocated the use of this Airborne Collision Avoidance System ("ACAS") and supported its certification by the FAA.

Mr. Pope prepared a one-half page synopsis of the MITRE report for me. Approximately three months before the September 28, 1978, midair collision over San Diego, I went into Administrator Langhorne Bond's office and informed him of the unpublished MITRE report. I handed him a copy of the one-half page synopsis of the report and suggested that he receive the 20-minute briefing that I had had prepared for him on the MITRE report. In response to the Administrator's further inquiry, I advised him to (1) have the best minds in the field develop specifications for a midair collision avoidance system, (2) promulgate these specifications, and (3) reevaluate the existing system within the context of these new specifications. The available report indicated the Honeywell device was workable and the most effective of the three systems available for saving

lives lost in midair collisions. The cost was only $1180 per aircraft.

The Administrator never requested a briefing from my source on the report. However, in view of the following it is my belief that he did receive such a briefing from another source. On the morning of the San Diego collision, however, I was summoned to the Administrator's office and asked for recommendations regarding what position and actions he should take in connection with the accident. Among my recommendations, I suggested that the Administrator, his Chief Counsel, and Executive Assistant avail themselves of the briefing on the MITRE report. Later that morning, such a briefing was conducted by Mr. Pope in my office. The Administrator's Executive Assistant, Mr. Roland Eckert, however was the only attendant. Following the briefing after Mr. Pope had left my office, Mr. Eckert pleaded with me: "Please, I beg you, do not brief the Administrator on this." I am aware that in subsequent Congressional testimony the Administrator denied knowledge of the MITRE report.[29/]

29/ Affidavit of Mary Anderson 1-3 (Dec. 13, 1983). Exhibit 49.

(continued...)

Ms. Anderson, like several other high-ranking officials familiar with the circumstances, believes the Administrator deliberately ordered Mr. Pope's transfer to defuse the ACAS controversy. Despite Ms. Anderson's personal communication to Mr. Bond of the MITRE report's existence and content and the briefing of his executive assistant, Roland Eckert, by Jim

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29/(...continued)
Mr. Pope's account of the briefing reports Mr. Eckert's reaction:

> When I unveiled the unreleased MITRE reports . . . , Eckert stared in astonishment. He asked me where I had obtained the reports, stating that he had never seen them before. I told him that I obtained them at a MITRE briefing for the Office of Systems Engineering Management. He said, "No matter, ACAS wouldn't have prevented the San Diego crash." I told him that it would have provided a perfect scenario for proving ACAS effectiveness. With that, Eckert took my two original copies of the reports, and I was dismissed from the room..

Affidavit of James C. Pope 39 (Aug. 25, 1982). Exhibit 9.

Pope shortly after the San Diego crash. Mr. Bond told the Aviation Subcommittee of the House Committee on Public Works and Transportation in hearings following the San Diego accident that he had no knowledge of the MITRE report or the Honeywell "AVOIDS" ACAS:

> Mr. Levitas: I would like to know whether or not you are personally familiar with and have read or studied a report prepared by the MITRE Corp. in July 1976 relating to the impact of the UG III ATC system on aviation safety?
>
> Mr. Bond: No, but I am sure Bill Flener here, is.
>
> Mr. Levitas: Well, I am not interested right now in whether Mr. Flener is or not. I am interested in whether you are aware of it.
>
> Mr. Bond: It is on the upgraded third system? No.
>
> * * * *
>
> Mr. Levitas: The reason I want to find out your knowledge as Administrator of the FAA is, it seems to me terribly important in a matter of such grave importance that these decision options

> should be made available to you and not be short-circuited someplace in the bureaucracy before they get to you.
>
> Now, the fact that you are not familiar with that particular report gives me some concern that perhaps there is a short circuit someplace.[30/]

In a follow-up letter to Congressman Levitas, Administrator Bond represented the MITRE report to be "neither a study nor a formal report [but rather] a briefing presented by the MITRE Corporation [consisting of] viewgraphs used in that oral presentation; however, at the time you asked no one on my personal staff had seen the copies of the viewgraphs."[31/] An examination of this letter shows that

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30/ Proposals to Increase the Amount of Controlled Air Space: Hearings Before Subcomm. on Aviation of the House Comm. on Public Works and Transportation, 96th Cong., 1st Sess. 25-26 (1979). Exhibit 50.

31/ Letter from Administrator Langhorne Bond to Congressman Elliot H. Levitas (June 20, 1979) [emphasis added]. Exhibit 54. See also Exhibits 51-53.

Mr. Eckert prepared this denial after having been personally briefed and having kept Mr. Pope's original copies of the MITRE reports. Thus, the "short circuit" or cover-up that Congressman Levitas feared apparently continued unabated after the Congressional hearings. This final, manifest example of the FAA's failure to act responsibly in dealing with ACAS and the MITRE report demonstrates that some person or persons in the Administrator's office was suppressing ACAS. The ensuing events make it evident those same interests arranged from Mr. Pope's "exile" to Seattle.

On August 18, 1978, Mr. Pope formally requested reassignment to the open position of Chief, Program Management and Appraisal Staff.[32/] Despite his qualifications for the position this request was ignored and he was informed on

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32/ Exhibit 55.

January 16, 1979, that unless he chose to resign, he was to be reassigned to Seattle, Washington.[33/] This reassignment would separate Mr. Pope from his wife, children, and recently completed home in Virginia and cause tremendous personal and financial hardship. The agency's justification for the distant transfer was the supposed unavailability of positions for Mr. Pope n the D.C. headquarters.[34/]

Several facts surrounding this situation reveal that the Seattle "exile" was purposely designed to punish him for his attempts to expose the ACAS cover-up and apparently to place Mr. Pope as far as possible from the decision-making process.[35/] First, of the 22-person AGA

33/ Exhibit 56.

34/ Id.

35/ Former FAA officials confirm the motivation behind Pope's Seattle transfer. See, e.g., Affidavit of Robert E. Jones 1 (July 1981). Exhibit 7.

professional staff, only he was reassigned outside of FAA headquarters against his wishes. The only other AGA staff members to be reassigned "in the field" left the D.C. headquarters voluntarily.[36/] Second, the timing of his transfer suggests that the announcement of his reassignment was delayed (5 months after announcement of the AGA disestablishment and 3 months after formal disestablishment) to take advantage of just a change in the Civil Service Act effective January 11, 1979 (5 days before his reassignment), that allowed reassignment to a lower rank within grade. Finally, it eventually became evident that the entire relocation was a pretext. There were in fact available positions in D.C. headquarters. The previously nonexistent

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36/ In fact, when another AGA official objected to his assignment outside of headquarters, the FAA withdrew his transfer. That official was found another suitable position in Washington, D.C.

Seattle "opening," on the other hand, was created specifically for Mr. Pope.

Robert Jones, Chief of the Technical Analysis Branch, FAA, Office of Aviation Safety, attests in an affidavit that his office had an opening which he tried to have Mr. Pope fill, but that the Administrator wanted him in Seattle:

> It was evident to me from conversations with FAA officials that FAA top staff wanted Jim Pope out of Headquarters and into Seattle and that this move was being directed by the Administrator's office. When I learned that Pope was finally being sent to Seattle I called Chris Walk, the then Regional Director in Seattle who . . . told me that as an old friend he was cautioning me to keep my nose out of this affair. He said that the orders to get Jim Pope to Seattle came from 'a very high level.' It was clear to everybody at that time that this was the Administrator's personal order and that he was upset with Jim Pope and wanted him out of Washington . . . . It was common knowledge in the organization that the Administrator,

> Langhorn[e] Bond, was behind Jim Pope's transfer to Seattle.[37]

37/ Affidavit of Robert E. Jones 2 (July 1981). Exhibit 7.

In his affidavit, Mr. Jones described his efforts to have Mr. Pope permanently assigned to his staff:

> At the time that the General Aviation Office was disestablished in late 1978 and early 1979, I was asked by Richard Scully, Director, Flight Standards, Service Division, if Jim Pope could work with me in headquarters while some appeal he had pending about his move to Seattle was decided. I agreed and was delighted to have Jim Pope work with me.
>
> * * * *
>
> The job that Jim Pope occupied in my office before he went to Seattle was a vacant position. When Mr. Scully, then Director of Flight Standards, Service Division, asked me whether I had a job for Jim Pope, <u>he told me that the Administrator wanted Pope to be in Seattle and that all they needed was a place to put him while he appeals</u>.
>
> I made it known to my superiors in Flight Standards that I was willing to keep Jim Pope on my staff so that he would not need to go to Seattle. I frankly was (continued...)

37/(...continued)
delighted with Jim Pope and although I had expected to have trouble from him because of what I had heard about him, he turned out to be a delight to work with and a real asset to my office. He was clearly a plus, he worked twice as hard as anyone else, and he did an absolute first rate job for me.

There was no question that at the time Pope was sent to Seattle there were jobs at Headquarters into which he could have been placed.

* * * *

It is not correct to say that the Seattle Office was the only office that was willing to take Jim Pope. The fact of the matter is that when I spoke to Chris Walk he told me not only to keep my nose out of the affair but also that he, Walk, did not want Jim Pope on his staff and would not accept him.

* * * *

In my experience, the FAA Administrator can place a person in any open position he wants. If the Administrator wanted Jim Pope placed n a position in Headquarters all they would have neded [sic] to do was to say that he was going to be in a particular location and work in a particular
(continued...)

Dr. Mervin K. Strickler, Jr., former Chief of the Aviation Education Programs Division within the AGA, also concurs:

> [I]t is my belief that top management wanted Jim Pope out of FAA if possible. I know that supposedly 'discreet' inquiries were made of me--'do you suppose Jim Pope will take a job in the field?' The fact is that all key management knew that Jim had just completed an expensive home, that he was outspoken, controversial and promoting an approach to aviation safety in general and collision avoidance in particular that was counter to what the establishment was promoting.
>
> I am convinced in my own mind that Jim Pope was sent to Seattle in the hope that he would leave

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37/(...continued)

> place and that would have been done. Jim Pope could have been kept in the Washington Area if the Administrator wanted to keep him there; the fact of the matter is he wanted him in Seattle in order to punish him for speaking up and this is what he did.

Id. at 2-4 [emphasis added].

> the FAA. It was an inhumane, punitive transfer.[38/]

Dr. Strickler's involvement in the disestablishment of the AGA placed him in a position to know that something was awry in the Agency's treatment of Jim Pope. Dr. Strickler had been charged by Associate Administrator Mary Anderson with the preparation of a plan of action relating to the disposition of AGA personnel upon the abolishment of that office.[39/] His plan recommended transferring Mr. Pope's Industry and Government Liaison Division wholesale to Anderson's Office of Policy Development and Review. This proposed transfer specifically provided:

> The staff will include the current on-board and authorized staff in the present similar division in the Office of General

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38/ Affidavit of Mervin K. Strickler, Jr. 2 (Dec. 8, 1983). Exhibit 2.

39/ Dr. Strickler also performed the background work for the creation of the AGA. See id. at 1.

> Aviation. However, the staff will be augmented by existing personnel from within the Office of Aviation Policy because the new function will not be limited to general aviation.[40]

Anderson approved this plan and recommended it to the Administrator.

Mary Anderson not only confirms her intent to have Mr. Pope transfer along with the rest of his colleagues on her staff but agrees with Dr. Strickler on the motivation behind Mr. Pope's "special" treatment. She explains that despite her efforts as the third highest ranking official in the FAA:

> [S]ome one at a high level in the FAA decided, apparently for reasons personal to Mr. Pope, to move him out of headquarters to Seattle. I have strong reason to believe this action was ordered by the Administrator in an effort to defuse the ACAS issue.[41]

40/ Exhibit 59, p. 3.

41/ Affidavit of Mary Anderson 3-4 (Dec. 13, 1983). Exhibit 49.

(continued...)

41/(...continued)

In regard to the availability of headquarter positions for Pope at the time of his transfer, Ms. Anderson states:

> At the time I became Associate Administrator, the FAA was undergoing a reorganization which included the disestablishment of the Office of General Aviation, in which Mr. Pope was employed. What had been the Office of General Aviation was being transferred into my office and I expected that Mr. Pope would be brought onto my staff. I believed that he could make a major contribution to the policy formulation process. When I became aware that Mr. Pope was not reassigned to the Office of Policy and International Aviation Affairs, I requested a position be made for him. I was subsequently advised that this was not possible. This decision could only have been made at a level in the administration above the level of my own.
>
> Mr. Pope was not assigned to my office, but instead was transferred to Seattle, Washington. In my view, there was a position available for Mr. Pope n my organization. I would have indeed welcomed him. It never occurred to me that Mr. Pope would not remain at FAA headquarters because of his apparent sensitivity to the need for

(continued...)

Finally, Mr. Pope's former supervisor in the AGA, Allan Landolt, has also stated his belief that Jim Pope is the victim of agency retaliation for his conscientious refusal to ignore the ACAS controversy:

> Jim spoke out forcefully in support of ACAS and was free with his advice to members of Congress on the benefits of ACAS, and he urged them to encourage the FAA to require the use of the system to save lives of the flying public. This contributed to his exile by the current FAA administration in my judgment since he had fought powerful persons in the FAA who simply did not want him around.
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> * * * *
>
> Mr. Pope was sent to Seattle, away from his Washington, D.C., home. General Aviation has lost its positive representation within the agency but it would be unconscionable if a dedicated, quality employee like James Pope

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41/(...continued)
appropriate liaison with the aviation community and his obvious skill in that capacity.

Id. at 3.

> remains the object of retaliation because he carried out his responsibility in a quality matter [sic, manner], as assigned. With his skills and knowledge, he should be used productively by the FAA. He should never have been assigned to a meaningless job in Seattle just to get him out of Washington, and with the hope, I suspect, that he would just leave the agency.[42/]

C. Make-work Position in Seattle

Mr. Pope responded to the "transfer or resign" ultimatum by filing an informal grievance on January 31, 1979,[43/] which was rejected on February 21, 1979.[44/] Shortly thereafter, he received his new job description, which appeared challenging, and decided to forego a formal grievance and accept the transfer.

42/ Affidavit of Allan F. Landolt 4 (Nov. 12, 1980). Exhibit 6.

43/ Exhibit 57.

44/ Exhibit 58.

Upon his arrival in Seattle, however, Mr. Pope found the job description to be totally inaccurate. His new supervisor, Charles Schroeder, admitted that the position had been specifically created in Seattle to accommodate his forced relocation from headquarters.[45/] Mr. Schroeder also indicated that these functions set forth in the job description did not actually exist and that if Mr. Pope were to leave the posi-
position it would not be refilled. Moreover, Mr. Pope was literally ostracized by his new associates in the Seattle office. Many candidly told him that they had been advised to "stay away from Pope if you value your professional reputation."

45/ This situation was later publicized in a Seattle Times feature article exposing Mr. Pope's "banishment" from FAA headquarters. See notes 54-59 and accompanying test, infra.

Mr. Pope's transfer to Seattle formally began in May 1979. Mr. Walk, the Regional Director of the FAA Seattle office, had initially objected to Mr. Pope's transfer, but complied when ordered to create a position for him.[46/] Mr. Pope's primary functions in the new contrived position involved organizing charitable campaigns, savings bond programs, projects for the Explorer Scout program, and similar duties unrelated to the FAA mission.[47/] His several attempts to gain meaningful work were denied.[48/]

After over a year of ostracism from his colleagues, separation

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46/ See text accompanying note 57, infra.

47/ Despite the insignificance of these duties, Mr. Pope nevertheless performed a "superb job." Exhibits 60-61.

48/ His attempts to get a hardship transfer home to his wife and children were similarly unsuccessful. Exhibit 62.

from his wife, children, and home,[49] and denial of any meaningful work, Mr. Pope retained an attorney, Irving Kator, to challenge the propriety of the Seattle transfer. Mr. Kator wrote Secretary of Transportation Neil Goldschmidt on July 14, 1980, requesting Mr. Pope's reassignment to FAA headquarters.[50] This request was bucked to the FAA Director of Personnel and Training, Donald B. Rock. Mr. Rock's response instructed Mr. Pope to apply for open positions through the Merit Promotion Program or FAA internal placement program, claiming: "[o]ur records do not indicate that he has applied for a position under

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49/ Mr. Pope's "sins" also visited upon his wife and children, who were also subjected to great hardship by his exile. See Mailgram from Florence B. Pope to President Ronald Reagan (June 2, 1981), Exhibit 63; Letter from Florence B. Pope to Edwin Harper (Dec. 5, 1982), Exhibit 64.

50/ Exhibit 65.

either of these programs."[51] In fact, Mr. Pope had applied for over 18 D.C. openings in the FAA as well as nine in NASA since March of that year.[52]

Unsuccessful in his internal attempts for relief, Mr. Pope finally decided to go public with his story in October 1980.[53] The Seattle Times investigated his claims and published its findings in an article headlined "EXILE IN SEATTLE--FAA TRANSFERS CRITIC TO NO-WORK JOB" on October 30, 1980.[54] The article emphasized that Mr. Pope received a GS-15 salary of over $50,000 and had been given

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51/ Exhibit 66.

52/ Exhibit 67.

53/ Even after going public, Mr. Pope continued his internal efforts. As late as May 1981, he sent a mailgram to the Administrator himself, proposing they meet and work together. Mailgram from J.C. Pope to J. Lynn Helms (May 5, 1981). Exhibit 68. This mailgram was never answered.

54/ Seattle Times, Oct. 30, 1980, at B1, Col. 2. Exhibit 69.

no work in over a year and a half. It further pointed out that his transfer had been forced on the Seattle office against the will of the regional officials. The story was syndicated by the Associated Press and run the following day in newspapers nationwide.[55/]

A companion article in the Seattle Times detailed why the Seattle FAA office thought of Mr. Pope "as the guy who was 'banished' from Washington, D.C.:"[56/]

> Pope didn't want to leave his new $350,000 home in the capital, and his wife didn't want to leave her job at the Kennedy Center.
>
> House and wife stayed in Washington. Pope came to the Federal Aviation Administration's Northwest regional office.
>
> His supervisors in the Seattle office were apparently as unenthusiastic about his arrival as he was.

55/ See, e.g., Houston Post, Oct. 31, 1980, Exhibit 70.

56/ Seattle Times, Oct. 30, 1980, at B2, col. 1. Exhibit 71.

* * * *

> [T]he Seattle office was given no choice on Pope's transfer. Washington apparently didn't want him at headquarters, but something had to be done with a GS-15 to justify a $50,000-a-year paycheck.
>
> * * * *
>
> 'I was directed to put him on my staff,' said Charles Schroeder, head of the aviation administration's engineering and manufacturing division in Seattle.
>
> Schroeder said he received his instructions from Christian B. Walk, then administrator of the Northwest region.
>
> 'Mr. Walk indicated he had little choice in the matter,' Schroeder observed. Walk, now retired, has been unavailable for comment.[57]

The newspaper also substantiated Mr. Pope's claim of lack of meaningful work:

> John Howe, the genial assistant administrator for the region, smiled as [Pope's] job description was read to him.
>
> * * * *

57/ Id.

> The job description, Howe observed, 'sounds like the kind of hyperbole used to justify a GS-15 salary.'
>
> He agreed that Pope had been assigned virtually no work related to the job description or, for that matter, any meaningful task at all in the Seattle office.[58/]

The New York Times published a similar feature story on Mr. Pope and the ACAS controversy on October 31, 1980.[59/]

The Seattle branch office of the Merit Systems Protection Board ("MSPB") Office of Special Counsel heard of the October 30 Seattle Times articles and promptly contacted Mr. Pope.[60/] This sudden display of interest quickly subsided, however. After a great deal of

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58/ Id.

59/ The New York Times, Oct. 31, 1980, S 4, at 10. Exhibit 72. See also Aviation Consumer, Jan. 1, 1981, at 8-11. Exhibit 73.

60/ Exhibit 74.

prompting, the office finally closed its investigation 12 months later.[61/]

Mr. Pope had filed a formal grievance in the FAA regional office on September 19, 1980, before speaking out publicly. Deputy Director Jonathan Howe was assigned to investigate and respond to the grievance. Mr. Howe replied on November 10, 1980.[62/] In connection with Mr. Pope's charges of FAA punitive action and reprisal, Mr. Howe concluded that the requested relief of transfer back to D.C. headquarters was beyond the scope of the grievance procedure and suggested that he proceed with an MSPB complaint. Regarding his complaints of no meaningful work, however, Mr. Howe agreed that it was inappropriate for Mr. Pope to continue in his current position. Accordingly,

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61/ See note 97, infra.

62/ Exhibit 75.

Mr. Howe reassigned him to the position of Aviation Safety Evaluation Officer within the Regional Appraisal and Planning Staff.[63/]

This reassignment brought Mr. Pope under a new supervisor, Michael J. Forrester. On December 3, 1980, Mr. Pope was notified that the reassignment was to take effect December 7, 1980, and that the new position had been determined to fall under the Merit Pay System.[64/] The FAA had just implemented a new performance appraisal system for merit pay employees. Thus Mr. Pope was moved from an admittedly no-work position to a new position where he would be deluged with assignments and from which his supervisor could more easily (and would in fact quickly try to) fire him if

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63/ Exhibit 76.

64/ Exhibits 77-78.

he did not stop causing unfavorable publicity for the FAA.

The Pope case received widespread media coverage,[65/] including a spot on the "Good Morning America" program on November 1, 1980. The most significant event, however, occurred when the cameras of CBS's "60 Minutes" program attempted to interview Mr. Pope at his office in Seattle. At this point, the FAA's attitude toward Mr. Pope turned from vindictive to annihilative.

D. Final Harassment Campaign

On February 2, 1981, CBS newsman Mike Wallace interviewed Jim Pope for the "60 Minutes" program concerning the ACAS controversy.[66/] Two days later,

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65/ See, e.g., Flightline Times (Oct. 5, 1980), Exhibit 79; Washington Star (Nov. 16, 1980), at B-2, Exhibit 80; Aviation Magazine (Dec. 1980), at 7, Exhibit 81. See also Exhibit 82.

66/ A transcript of the "60 Minutes" program is attached at Exhibit 83.

Mr. Pope's new supervisor Mr. Forrester, began a sudden barrage of criticisms, rebukes, and adverse evaluations directed toward Mr. Pope's eventual attempted removal.[67]

The first memo, dated February 4, 1981, warned Mr. Pope that thenceforth he would be required to have all leave time

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67/ Forrester's personal attack on Mr. Pope is not an original defense:

> The classic response to the whistleblowing employee -- the ad hominem defense -- is to divert attention from the disclosure to the discloser by attacking her motivation. This tactic transforms the problem into a mere 'personality conflict,' which is comparatively easier for management to deal with. In fact, after a study of a large number of government whistleblowers, one congressional report concluded that regardless of the nature or validity of the issue involved in the original allegation, the major response of the bureaucracy is directed to the employee who came forward and not to the problem.

Raven-Hansen, Dos and Don'ts for Whistleblowers: Planning for Trouble, Tech. Rev., May 1980, at 34, 41.

approved in advance.[68/] It is evident from the circumstances that what actually disturbed Mr. Forrester was Mr. Pope's "60 Minutes" interview two days earlier.[69/] Mr. Forrester had refused Mike Wallace's request to interview Mr. Pope in his office. Mr. Forrester's new leave policy applicable to Mr. Pope was based on the fact that Mr. Pope had taken off 30 minutes early that afternoon to meet with "60 Minutes." He had arranged to have this time credited against his annual leave time as Mr. Forrester had orally approved that morning. In essence, Mr. Forrester was faulting Mr. Pope for not informing him in person before leaving the office. This was not possible, however, since Mr. Forrester was not in his office at that time.

68/ Exhibit 84.

69/ Exhibit 85.

This sudden decision to single out Mr. Pope for close supervision, motivated by the publicity he was generating, was merely the first instance in a series of hairsplitting, hypertechnical allegations and trumped-up accusations by Mr. Forrester.[70/] During the next seven months he took every conceivable opportunity to fault Mr. Pope in a very obvious effort to remove him from the FAA entirely.[71/] He placed Mr. Pope

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70/ Within two months. Mr. Forrester rated Mr. Pope's performance "unsatisfactory" and began to impose restrictions reminiscent of grade school. Mr. Forrester changed Mr. Pope's work schedule in order that he be "provided closer supervision." Mr. Forrester required a "weekly report." Finally, a co-worker was assigned to "help" Mr. Pope with his assignments. Exhibit 86.

71/ The extraordinary effort Mr. Forrester put into compiling his paper record against Mr. Pope is demonstrated in the great mass of documents he relied upon in attempting to justify the removal to the MSPB. Exhibit 87. Although this massive record appears normal on its face, a glance below the surface shows Mr. Forrester's true

(continued...)

AWOL, threatened him with charges of insubordination, proposed that he be suspended for three days, refused him leave time for subpoenaed Congressional testimony, reprimanded him for experiencing a kidney stone attack, and finally attempted to have him fired.

This abrupt, critical attack following Mr. Pope's decision to speak out publicly is particularly uncanny when viewed against his previous performance ratings.[72/] During his entire 15-year career with the FAA, Mr. Pope had uniformly received excellent evaluations by his supervisors, including his tenure in the AGA and the period in Seattle up until the "60 Minutes" interview.[73/] In fact, he

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71/(...continued)
intent to punish Mr. Pope for his allegations of waste and mismanagement.

72/ See note 12, supra.

73/ The Seattle Times remarked on the oddity of (Continued....)

was appraised for promotion potential in November 1979 by his second level Seattle supervisor as:

> an experienced, mature, and conscientious technical employee whose education and background provide good qualifications for employment / promotion in aviation safety management programs. His diversity of technical assignments in aircraft engineering and operations, both in and out of federal government, have provided him with better than average insights into future

73/ (Continued . . . .)

Mr. Forrester's evaluations of Mr. Pope in a follow-up story on the "Idle FAA 'Whistleblower':"

> [I]t is hard to read in Forrester's unsatisfactory-performance rating of the embattled Pope the same man portrayed in Landolt's affidavit.
>
> 'His performance was consistently of the highest quality,' Landolt says of Pope. 'Reference to his fitness reports, his quality in grade pay raises and bonuses, certificates of achievement and his many testimonial letters received will document this opinion.'

Seattle Times, July 12, 1981, at A10. Exhibit 88.

> aircraft system requirements. He is a willing and ambitious worker, and would have a high probability of success in achieving assigned goals in air safety engineering and/or accident prevention projects.[74]

An early example of Mr. Forrester's vendetta against Mr. Pope came March 27 1981, when he placed Mr. Pope on absent without leave for failing to satisfactorily justify travel time to Mr. Forrester.[75] Mr. Pope had already responded to Mr. Forrester's justification request in a memo dated March 20, 1981.[76] Forrester's reaction to the response is an indication of his belligerent attitude. He returned the memo to Mr. Pope noting at the bottom of the page: "The date on this is

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74/ Supervisory Appraisal (Nov. 26, 1979). Exhibit 89. Moreover, in December of 1980, after the flush of Seattle Times publicity, Pope was given a step increase in salary.

75/ Exhibit 90.

76/ Exhibit 91.

not correct. Correct the date to today [sic] date before I will consider this response."[77/] Mr. Pope was thus forced to explain in writing that the memo had been prepared on March 19, but that Mr. Forrester's secretary had been unable to complete its typing until March 20, by which time Mr. Pope was out of the office of an official interview and two weeks' absence during which time he was not available to sign the memo.

On March 18 1981, Mr. Pope replied to Forrester's first harassment memo (requiring him to have all leave time approved in advance in writing), explaining the circumstances discussed above. Mr. Pope agreed to comply with the new directive "as long as the policy/SF-71 submissions for any leave is uniformly

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77/ Id.

applied throughout the Northwest Regional Office."[78/] In response to this statement, Mr. Forrester threatened to "take disciplinary action against you for insubordination" for any failure to comply.[79/] The supervisor evidently felt the need to cover himself two days later by issuing a similar memo to Harold L. Colvard, a colleague of Mr. Pope, outlining the new leave policy.[80/] After the AWOL dispute was eventually submitted to arbitration, however, the Grievance Examiner found:

> It is clear that there is no unified policy for requesting annual leave for an hour or so within the Northwest Region. One supervisor stated that he did not want his employees bothering him when they wanted an hour or two off on annual leave. He wanted them to notify the T & A clerk who would record the annual

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78/ Exhibit 85.

79/ Exhibit 92.

80/ Exhibit 93.

> leave. This supervisor wanted notification only when at least a half day or more was being requested . . . . It can readily be understood how an employee would feel that he was being singled out under a situation wherein he must find his supervisor or the next higher level authority in order to take an hour of annual leave while an employee sitting on the other side of a partition has only to notify the T & A clerk and leave the building on annual leave with no notification to the supervisor.[81/]

By late March, several members of Congress had become aware of the ACAS controversy and scheduled hearings. Mr. Pope was subpoenaed on March 25, 1981, to testify on this issue before the House Subcommittee on Transportation, Aviation and Materials on March 31, 1981.[82/]

81/ Findings of Fact and Examiner's Recommendation in the Grievance of James C. Pope 5. Exhibit 94.

82/ Congressional Subpoena Duces Tecum of James C. Pope (Mar. 25, 1981). Exhibit 95. Mr. Pope was ordered to prepare and submit a written statement of his testimony in advance. Exhibit 96. (continued...)

Mr. Forrester made his position on this matter clear to Mr. Pope: "I want you to clearly understand that I consider this ACAS/BCAS matter personal business, and unless you are officially designated by the FAA to spend time on this matter, I will not accept it as an excuse for not doing your job."[83/] Due to the short lead time, Mr. Pope was thus forced to take time off from work against his annual leave in order to prepare his testimony. When he called FAA headquarters requesting the services of a typist and photocopying to prepare his testimony, this request was also denied.

After the Congressional hearings, Mr. Pope was finally able to question the refusals of leave time and support

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82/(...continued)
Mr. Pope's testimony was published in the hearing report. Exhibit 97.

83/ Exhibit 98; Mr. Forrester formally refused Mr. Pope duty status on March 31, 1981. Exhibit 99.

services.[84/] On May 13, 1981, he called Tom Moyer of the General Counsel within the Office of Personnel Management and discovered not only that his testimony was to be considered "line of duty," but also that Moyer had advised the FAA of this between March 23 and 27 in response to their inquiries.[85/] Mr. Pope filed a formal grievance on June 2, 1981, asking that his annual leave be properly recredited.[86/] Deputy director Howe refused to entertain the grievance, however, claiming that it should have been filed within 15 days of Mr. Forrester's denial.[87/]

84/ Exhibit 100.

85/ Statement of James C. Pope to Office of Special Counsel, May 14, 1981. Exhibit 101.

86/ Exhibit 102.

87/ Exhibit 103. Thus, not only did the FAA knowingly deny Mr. Pope support services for his Congressional testimony, it also (continued...)

By May 15, 1981, Mr. Forrester was finally able to record a blemish on Mr. Pope's outstanding 15-year career record. On April 9, 1981, Mr. Forrester proposed to suspend Mr. Pope for three days for failing to satisfy Forrester that four hours of travel time were justified.[88/] Mr. Pope challenged the suspension and the matter was put before a grievance examiner. The examiner reviewed the situation and reported:

> Mr. Pope views Mr. Forrester as a supervisor under orders to harass him. This is somewhat substantiated by the manner in which this charge of awol and the suspension action was handled. It appears that this matter has

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87/(...continued)
deprived him of his annual leave. To further aggravate this affront, Mr. Forrester, who had already given Mr. Pope twice as many annual airport inspection assignments as had been the policy of his predecessor, refused to recognize the Congressional testimony as justification for extension of project completion deadlines. Exhibits 98-99, 104.

88/ Exhibit 105.

never been discussed face to face. The first notice that Mr. Pope had that anything was wrong was Mr. Forrester's memo asking him to explain the excess time taken to return from San Francisco. Inasmuch a Mr. Pope's desk is but a few feet from Mr. Forrester's desk, I find no reason as to why Mr. Pope could not have been personally asked for an explanation. Had this been done, the entire matter may have been resolved at that time. Had Mr. Forrester explained again to Mr. Pope that comp time was not allowed, and that he would have to charge annual leave, Mr. Pope would have, at that point, had an opportunity to ask for annual leave.

I find little justification for any supervisor conducting all contact with an employee by memo without first discussing matters face to face. Such discussions may be followed up with a memo if necessary but Mr. Forrester, by not discussing matters face to face with Mr. Pope, gives the impression that he has given up all expectations of establishing a good working-atmosphere within his office. Such an impression can only act to reinforce Mr. Pope's impression that Mr. Forrester is under orders to harass him.

* * * *

> Mr. Forrester's method of enforcing the rules, his failure to continue his efforts to establish lines of communication and his insistance [sic] upon requiring advance notice for all annual leave, even if only an hour is taken, when other supervisors do not have such a requirement, can only strengthen Mr. Pope's belief that he is being singled out for punishment.[89]

Finding Mr. Pope partially at fault as well in failing to diligently determine the "first available flight" before traveling, the examiner ultimately recommended that the three-day suspension be reduced to one day.

E. Illness and Disability

Mr. Pope suffered three kidney stone attacks while stationed in Seattle. The final attack occurred on June 23, 1981. That morning he managed with great difficulty, but was able to call

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89/ Findings of Fact and Examiner's Recommendation in the Grievance of James C. Pope 5-6. Exhibit 94.

in to the office. Marty Brazier answered the telephone. Mr. Pope notified him of his condition and hung up. Mr. Forrester took this opportunity to issue an official letter of reprimand to Mr. Pope for "failing to contact {Forrester personally] for approval of sick leave."[90/] Mr. Pope protested this vindictive action in a memo to Deputy Director Howe on July 15, 1981.[91/] Apparently recognizing that this time Mr. Forrester was going too far, Mr. Howe never bothered to respond to Mr. Pope's memo.

It took Mr. Forrester only a few months to amass a paper record he felt was sufficient to have Mr. Pope removed on an array of charges including unacceptable performance, insubordination, improper use of duty time, and failure to carry out

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90/ Exhibit 106.

91/ Exhibit 107.

orders.[92] By late September 1981, the strain of the unrelenting attack had caused Mr. Pope to suffer severe mental and emotional distress.[93] On September 21,

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92/ Exhibit 108.

Mr. Forrester's charges against Mr. Pope largely resulted from Forrester's refusal to recognize Mr. Pope's preparation to testify and Congressional testimony as "line of duty." See test accompanying notes 77-81, supra. The individual allegations of Mr. Forrester's charges were adequately rebutted in Mr. Pope's written reply to the notice of proposed removal (Oct. 30, 1981). Exhibit 109. The charges were further refuted in Mr. Pope's Oral Reply (Dec. 2, 1981). Exhibit 110.

Particularly indicative of Mr. Forrester's charges is the fact that his allegation of unacceptable performance was based on criticisms of a study Mr. Pope completed May 13, 1981. Mr. Forrester withheld these criticisms for over four months until the data of the proposed removal.

93/ Jim Pope had no history of severe emotional disturbance before he began to manifest symptoms of emotional stress in May 1981. He appeared sad and irritable, experienced difficulty concentrating and maintaining his composure, and suffered insomnia and feelings of social isolation. At the request of his internist, Mr. Pope consulted Dr. Stephen J. Melson, a (continued...)

93/(...continued)
psychiatrist in Seattle's Mason Clinic, on May 19, 1981. Dr. Melson examined Mr. Pope again on August 7, 1981, by which time his condition had deteriorated. Dr. Melson diagnosed Mr. Pope's suffering as generalized anxiety and major depressive disorders. Exhibit 111.

Following this diagnosis, Mr. Pope took a medical leave to begin therapy treatment under Dr. Mark Rosse, a D.C. psychiatrist. Dr. Rosse and an associate, Dr. Kenneth Ullman, both examined Mr. Pope and concurred in Dr. Melson's diagnosis. Exhibit 112. Dr. Rosse prescribed a series of therapy sessions once or twice a week and continuation of Dr. Melson's prescribed Mellaril drug treatment.

At this same time, Mr. Forrester continued to torment Mr. Pope. On September 17, 1981, he threatened to place Mr. Pope AWOL if he did not cease his medical treatment and return to Seattle. Exhibits 113-114. Dr. Rosse protested this action, warning that a return to work at that time would risk "devastating emotional consequences for this patient [and would be] very dangerous from a psychiatric standpoint." Exhibit 115. Mr. Forrester responded by insisting that Mr. Pope submit to an examination by an FAA psychiatrist, who pronounced him fit for work. Exhibit 116.

On September 20, 1981, Mr. Pope was admitted to Sibley Memorial Hospital in D.C. on the advise of Dr. Rosse. Mr. Forrester ordered Mr. Pope back to work the following

(continued...)

1981, on the advice of his physician, Mr. Pope was admitted to the psychiatric ward of Sibley Hospital in Washington, D.C. The Office of Workers Compensation Program ("OWCP") of the U.S. Department of Labor eventually determined that his mental and physical condition was a traumatic, on-the-job injury and awarded him medical disability payments.[94]

While Mr. Pope was disabled and undergoing treatment for mental stress, Mr. Forrester took advantage of the

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93/(...continued)
day. Exhibit 117. The true state of Mr. Pope's condition was finally determined by Dr. Zigmond Lebensohn, the Chief Emeritus of Sibley Memorial Hospital's Department of Psychiatry. Dr. Lebensohn concluded that Mr. Pope was definitely suffering a psychiatric disorder and cautioned: "Return to any type of duty in the FAA, will only cause a recurrence and exacerbation of his present condition and would, in fact, jeopardize his health." Exhibit 118. Mr. Pope remained hospitalized until October 13, 1981. At that time, his wife, a practicing professional nurse, assumed his care during recovery.

94/ Exhibits 119-20.

opportunity by bringing a termination action on September 28, 1981, adding as the final charge that Mr. Pope was AWOL.[95/] Only after an FAA-contracted psychiatrist, Dr. Zigmund M. Lebensohn, affirmed the diagnoses of Mr. Pope's personal psychiatrists[96/] did Forrester reluctantly withdraw the absent without leave charge. Jim Pope was removed effective December 18, 1981.[97/]

95/ Exhibit 108.

96/ See note 93, supra.

97/ Exhibits 121-22.

The Office of Special Counsel ("OSC") of the MSPB stopped its investigation of Mr. Pope's Seattle transfer complaints in October 1981. An assistant special counsel decided there was "no basis for [his office] pursuing the case further." Exhibit 123. This inaction was an example of the OSC's refusal to comply with its congressional mandate that led one of the OSC's original proponents to introduce legislation to abolish the Office as a waste of tax money. See Statement of Rep. Patricia Schroeder, Exhibit 124. See also Death of a Reform, Dallas Times Herald (Mar. 23, 1982). Exhibit 125.

Mr. Pope contested the removal in an appeal to the Merit Systems Protection Board ("MSPB") on January 2, 1982.[98] After a series of motions to have venue changed, the case was assigned to an administrative law judge June 25, 1982, and a hearing on the merits was scheduled for August 18, 1982. Two days before this hearing was to take place, however, the FAA

98/ Exhibit 126.

Apparently not satisfied with having destroyed Mr. Pope's career, the FAA vindictively objected to his receipt of unemployment compensation, erroneously asserting that his removal was based on "misconduct." Exhibit 127. Mr. Pope was awarded unemployment compensation by the State of Washington's Employment Security Department on March 24, 1982. Exhibit 128. The FAA, in an obvious attempt to further punish Mr. Pope, objected to the award, contending that Mr. Pope's removal was in fact based on willful and deliberate conduct against the FAA's best interest. Exhibits 129-31. When the Appeals Tribunal denied the FAA's request for a dilatory and costly two to three-day fact-finding hearing with 10 to 15 FAA witnesses, the FAA agreed to be bound by the results of the pending MSPB hearing covering the same questions. Exhibit 132.

approached Mr. Pope's counsel with a proposal to dismiss the appeal.[99] On August 20, 1982, the FAA announced that it was dropping the removal action and purging Mr. Pope's personnel file of all charges and allegations. The FAA justified its decision to cancel the removal action on the Office of Personnel Management's May 13, 1982, approval of disability retirement for Mr. Pope and OWCP's June 6, 1982, award of medical disability health benefits.[100] The FAA evidently recognized the weakness of its position and was satisfied just to have Mr. Pope out of service. The MSPB proceeding was dismissed October 13, 1982.[101]

V. EPILOGUE

99/ Exhibit 133.

100/ FAA Motion to Dismiss Appeal, Aug. 20, 1982. Exhibit 134.

101/ Exhibit 135.

Mr. Pope is listed as on disability as of the December 18, 1981, attempted removal date.[102/] He is receiving worker's compensation benefits while he recovers from the emotional trauma of the Seattle harassment campaign.

As this affair came to light through media publicity, several members of Congress from both the Senate and the House became aware of the FAA's unlawful retaliation against Mr. Pope. Shortly after Mr. Pope's Congressional testimony on ACAS, Congresswoman Patricia Schroeder (D-Colo.) became aware of Mr. Forrester's harassment campaign against Mr. Pope and predicted his attempt to "build a paper record to sustain a performance based separation.[103/] As chairwoman of the

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102/ See note 94, supra.

103/ Letter from Patricia Schroeder to Drew Lewis (May 22, 1981). Exhibit 136.

(continued...)

House Subcommittee on Civil Service, Representative Schroeder objected to the FAA's "long series of harassments" of Mr. Pope in a letter to Secretary of Transportation Drew Lewis on May 22, 1981.[104/] As Mr. Forrester continued to construct his paper record, other members of Congress voiced their concern to agency officials.[105/]

Representative Robert K. Dornan (R-Cal.) became aware of the retaliation against Mr. Pope and contacted FAA Administrator J. Lynn Helms directly in

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103/(...continued)
Secretary Lewis responded August 5, 1981, assuring Representative Schroeder of the FAA's commitment to protecting whistleblowers. Letter from Drew Lewis to Patricia Schroeder (Aug. 5, 1981). Exhibit 137.

104/ Exhibit 136.

105/ See, e.g., letter of J. Lynn Helms to Guy Vander Jagt (Aug. 12, 1981), Exhibit 138; letter from Robert K. Dornan to Donald J. Devine (June 26, 1981), Exhibit 139.

late September 1981 with a conciliatory proposal to place Pope in a legislative fellowship on Capitol Hill. The Administrator brusquely responded that he would not have Pope on the Hill destroying FAA programs, explaining, "I don't tolerate whistleblowers."[106/]

When Mr. Forrester finally began his proposed removal, Senator J. James Exon (R-Neb.), and Representatives Patricia Schroeder, Guy Vander Jagt (R-Mich.), and Robert K. Dornan collectively wrote Secretary Lewis protesting the FAA retaliation.[107/] This and later attempts[108/] by the same members of Congress to have Jim Pope's situation

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106/ Affidavit of Robert K. Dornan 2 (Dec. __, 1983). Exhibit 140.

107/ Letter from J. James Exon, et al., to Drew L. Lewis (Nov. 6, 1981). Exhibit 141.

108/ See, e.g., Letter from J. James Exon, et al., to Drew L. Lewis (Dec. 3, 1982). Exhibit 142.

redressed have thus far produced little more than dogmatic responses.

Throughout his experience with the FAA, Jim Pope has always been cooperative and has attempted to work within the system.[109/] Nevertheless, he had the courage to speak out and reveal waste and mismanagement when it was apparent that important policy decisions were being based on selfish bureaucratic interests at the expense of the flying public's safety. He refused to compromise his convictions in these areas in the face of intense agency animus and career threatening retaliation.

Several of his colleagues who are no longer with the FAA and subject to its wrath have attested to his persecution. It is uniformly agreed that Mr. Pope was one of the ablest minds on aviation safety in

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109/ See Affidavit of Jon H. Oberg (Nov. 25, 1983). Exhibit 143.

the FAA. What makes his treatment even more scandalous is (as his retired FAA colleagues agree) that he was right -- the cover-up of ACAS was at best delinquence. The attempts to silence Jim Pope, however, were patently unlawful.

Prior to pursuing other avenues of relief, Mr. Pope has asked that the Department of Transportation review this unfortunate situation. He is hopeful that the Department will act swiftly and responsibly. Mr. Pope's recovery from his job-related mental and emotional stress has progressed to the point where his return to active employment status may be possible medically. Mr. Pope's principal desire is to return to his career in aviation safety in a productive capacity without a recurrence of the events outlined in this memorandum.

APPENDIX G (1)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JAMES C. POPE, Plaintiff	)	C.A.# 84-2922
v.	)	**FILED**
LANGHORNE BOND, ET AL.,	)	June 20, 1985
Defendants	)	James E.Davey,
	)	Clerk

ORDER

This matter comes before the court on defendants' motion to dismiss plaintiff's complaint for failure to state a claim on which relief can be granted. For reasons stated in the accompanying Memorandum, filed by the court this date, it is, by the court, this 20th day of June, 1985.

ORDERED that plaintiff's claims for injunctive relief prohibiting defendants from interfering with his attempts to obtain reemployment within the Department of Transportation or from harassing him upon his return to employment with the federal

government are dismissed; and it is further

ORDERED that plaintiff's claim for damages for defendants' allegedly improper decision to remove him effective December 18, 1981, is dismissed; and it is further

ORDERED that in all other respects, defendants' motion to dismiss for failure to state a claim upon which relief can be granted is denied; and it is further

ORDERED that defendants' motion for a protective order is dismissed as moot; and it is further

ORDERED that defendants' motion for leave to file reply memorandum in support of defendants'motion to dismiss is granted and that said reply memorandum shall be deemed filed as of June 13, 1985.

/s/ Thomas A. Flannery

UNITED STATES DISTRICT JUDGE

APPENDIX G (2)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JAMES C. POPE, Plaintiff) C.A.# 84-2922

v.) FILED

LANGHORNE BOND, ET AL.,) FEB 10, 1986

Defemdamts) Clerk,U.S.Dist.Ct.

---------- District of Columbia

O R D E R

UPON CONSIDERATION of the Court's Order dated January 28, 1986, granting plaintiff's motion for leave to file and serve a second amended complaint, it is hereby ordered that further proceedings in this action shall be governed by the following schedule:

(1) All defendants, including defendants Weithoner, Onstad, Rock, Driscoll, and Helms, are to file, within 60 days of the entry of this order, any motions to dismiss pursuant to Rule 12(b), F.R. Civ. P., on any and all threshold legal issues they wish to raise, including but not limited to, subject matter and personal jurisdiction, failure to state

claims, failure to exhaust administrative remedies, venue, statute of limitations, official immunity, and mootness.

(2) Plaintiff will file his opposition(s) to defendants' motions within 30 days of his receipt of defendants' motions;

(3) Defendants will file any replies within 15 days of receipt of plaintiff's opposition(s);

(4) A hearing shall be held on defendants' motions on June 6, 1986, at 9:30 a.m.

(5) Discovery shall be stayed pending resolution of defendants' motions, unless otherwise allowed by order of the Court. during the remainder of this case, the Court will only entertain requests for further stays of discovery based upon any motion filed by defendants outside the time period set forth in paragraph (1) of this order upon a substantial showing of good cause.

(6) Further proceedings on plaintiff's motions to compel and preserve records shall

be stayed pending resolution of any motions filed by defendants pursuant to paragraph (1) of this order.

(7) No extensions of any deadline under this order will be granted without a showing of good cause.

/s/ Thomas A. Flannery

UNITED STATES DISTRICT JUDGE

Dated: 2-10-86

APPENDIX G (3)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JAMES C. POPE, Plaintiff) C.A.#84-2922

v.) FILED

LANGHORNE BOND, et al.,) August 5, 1986

Defendants.) Clerk, U.S.Dist.Ct.

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ORDER

This matter comes before the court on the motions of the Federal Aviation Administration and the individual defendants to dismiss the complaint pursuant tc Rule 12(b) of the Federal Rules of Civil Procedure. After consideration of these motions, the opposition thereto, and the entire record herein, it is, by the court, this 5th day of August, 1986.

ORDERED that defendants Onstad, Weithoner, Rock and Driscoll's and plaintiff's supplemental memoranda may be filed; and it is further

ORDERED that defendants' motion to reconsider this court's ruling in Pope v.

Bond, 613 F.Supp. 708 (D.D.C.1985) is denied; and it is further

ORDERED that a three-year statute of limitations applies to plaintiff's constitutional and Bivens' claims and therefore only a conspiracy arising out of actions on or after September 19, 1981 is timely; and it is further

ORDERED that plaintiff's claims under 42 U.S.C. 1985(1) and 42 U.S.C. 1985(3) are dismissed; and it is further

ORDEREDthat plaintiff's claim under 5 U.S.C> 552a(e)(7) is dismissed; and it is further

ORDERED that defendants Langhorne Bond, Roland Eckert, Christian Walk, and Clark Onstad are dismissed from this suit; and it is further

ORDERED that in all other respects defendants' motions are denied; and it is further

ORDERED that all future discovery matters and disputes are referred to the United States

Magistrates' Office for resolution; and it is further

ORDERED that a status conference is set for August 27, 1986 at 9:30 a.m.

/s/ Thomas A. Flannery

UNITED STATES DISTRICT JUDGE

APPENDIX G (4)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JAMES C. POPE, Plaintiff,) C.A.#84-2922

v.) **FILED**

LANGHORNE BOND, et al.,) August 29, 1986

Defendants) Clerk,U.S.Dist.Ct

) Dist of Columbia

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(MEMORDUM) ORDER

This matter comes before the court on separate motions of defendants for extension of time to answer the complaint, as well as certain defendants' motions for stay of discovery, and motions for certification of issues for appeal under 28 U.S.C> 1292.

.....For the above stated reasons, after consideration of these motions, the opposition thereto, and the entire record herein, it is, by the court, this 29th day of August, 1986,

ORDERED that plaintiff's motion to clarify the August 5, 1986 Order with respect

to Fifth Amendment immunity is denied; and it is further

ORDERED that defendant Helms' motion for certification under U.S.C. 1292 is denied; and it is further

ORDERED that motion of defendants Weithoner, Rock, and Driscoll for certification under 28 U.S.C. 1292 (b) is denied; and it is further

ORDERED that defendants' motions for extension of time in which to answer or otherwise respond to the second amended complaint are granted; and it is further

ORDERED that defendants' motions for a stay of discovery are granted pending disposition of their appeal, if taken, by the Court of Appeals; and it is further

ORDERED that defendants respond to plaintiff's second amended complaint no later than 10 days following disposition of their appeal, if taken, by the Court of Appeals; and it is further

ORDERED that in event no appeal is taken

defendants shall respond to plaintiff's second amended complaint no later than 10 days from the filing of this Order.

/s/ Thomas A. Flannery

United States District Judge

APPENDIX G (5)

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No: 86-5603 September Term, 1986

James C. Pope, C.A.No. 84-02922

v. FILED

Langhorne Bond, et al., June 2, 1987

Charles E. Weithoner, George A. Fisher

Donald B. Rock and Clerk

Lionel R. Driscoll

Appellants

And consolidated cases

BEFORE: Wald, Chief Judge

Mikva and Buckley, Cir.Judges

ORDER

Upon consideration of Plaintiff-Appellee's Motion for Summary Affirmance, appellants' various Motions to Stay Proveedings and the Opposition thereto, appellants' various Motions for Extension of Time in Which to Respond to Appellee's Notion for Summary Affirmance and the Opposition

thereto, and appellee's Notice of Decisions and Supplemental Authority and the response thereto, it is

ORDERED by the court that the Motions to Stay Proceedings be denied. It is

FURTHER ORDERED by the court that appellants file responses to the Motion for Summary Affirmance no later than 15 days after this order is filed. Appellee may file a reply to the response no later than 25 days after this order is filed.

Per Curiam

APPENDIX G (6)

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 86-5603 September Term, 1987

James C. Pope C.A.No. 84-02922

v. FILED Dec 15, 1987

Langhorne Bond, et al. George A. Fisher

Charles E. Weithoner, Clerk

Donald B. Rock and

Lionel R. Driscoll,

Appellants

And consolidated cases

BEFORE: Ruth B. Ginsburg,

Starr and Buckley, Cir. Judges

O R D E R

Upon consideration of appellee's motion for summary affirmance, appellants' oppositions thereto, and appellee's reply, it is

ORDERED that said motion be granted substantially for the reasons stated by the district court in its August 5 and August 29,

1986 memoranda. Accepting plaintiff's allegations as true for the purpose at hand, defendants have not demonstrated, on the current record, that they meet the standard required for pretrial dismissal on qualified immunity grounds.

The Clerk is directed to withhold the issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 15.

Per Curiam

APPENDIX G (7)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JAMES C. POPE, Plaintiff.

v. C.A.No. 84-2922

LANGHORNE BOND ET AL., (Flannery, J.)

Defendants. F I L E D

---------- OCT 27 1988

ORDER

Upon consideration of the October 17, 1988 oral motions, through counsel, of defendants Lionel R. Driscoll, Michael J. Forrester, J. Lynn Helms, Jonathan Howe, Donald B. Rock, and Charles E. Weithoner to dismiss with prejudiceplaintiff James C. Pope's claims against them in their individual capacities in light of the opinion of the United states Court of Appeals for the District of Columbia Circuit in the consolidated cases of Spagnola v. Mathis (Nos. 84-5530, 84-5659 and 84-5822) and Hubbard v. EPA (No. 85-5145), the plaintiff's October 17, 1988oral opposition thereto, and the entire

record in this action, it is, by the Court, this 27th day of October 1988

ORDERED that the said oral motions be and hereby are **GRANTED** and it is further

ORDERED that the claims in this suit of plaintiff against defendants Driscoll, Forrester, Helms, Howe, Rock and Weithoner be, and hereby are dismissed with prejudice.

Dated this 27th day of October, 1988.

/s/ Thomas A. Flannery

United States District Judge